THE

LAND ACQUISITION ACT

(ACT X OF 1870)

WITH

INTRODUCTION AND NOTES,

TOGETHER WITH

THE RULES ISSUED BY THE GOVERNMENT AND BY THE BOARD OF REVENUE, REVISED TO DATE,

THE WHOLE FORMING A COMPLETE MANUAL OF LAW AND PRACTICE ON THE SUBJECT OF COMPENSATION FOR LANDS TAKEN FOR PUBLIC PURPOSES,

By H. BEVERLEY, M.A.,

OF THE BENGAL CIVIL SERVICE,

ADDITIONAL JUDGE OF 24-PERGUNNAHS AND HOOGHLY.

CALCUTTA:

THACKER, SPINK AND CO.

1882.

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718

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INTRODUCTION.

The first law on the subject of the acquisition of lands for public purposes in Bengal was Regulation I of 1824 of the Bengal Code, entitled "a Regulation for enabling the officers of Government to obtain, at a fair valuation, land or other immoveable property required for roads, canals, or other public purposes; and for declaring in what manner the claims of the zemindars and of the officers in the Salt Department are to be adjusted in certain districts where lands are required for the purposes of salt manufacture." After the usual preamble (section 1), the next six sections (2—7) of that Regulation laid down rules for the appropriation of lands for public purposes. Section 8 declared that those rules were not applicable to the removal of obstructions to the navigation of rivers; and sections 9—15 laid down special rules in regard to lands required by Government for the salt manufacture.

The procedure laid down in sections 2—7 was briefly as follows:—When "landed estate or other immoveable property or anything thereunto belonging" was required for a public purpose, then, "if there be any hinderance to the purchase of the said property by private bargain," the officer entrusted with the work, or any other officer specially appointed in that behalf, was to proceed to the spot, mark out the land, erect a flag upon it, stick up a notice, and make proclamation by beat of drum, requiring all persons interested to appear, and state their claims or objections; after which a report was to be submitted to Government with an estimate of the value of the property. If the parties objected to dispose of the land, or demanded an exorbitant consideration, but the Government still thought that, on grounds of clear and urgent public expediency, it should be appropriated,

recourse was to be had to arbitration. Two arbitrators were to be appointed by the parties, and two more by the Judge, Magistrate, Collector, or other officer whom the Government might commission for the purpose of superintending the arbitration; and these arbitrators chose an umpire.

The arbitrators were not authorised to go into questions of title and apportionment unless the claimants agreed in writing to abide by their decision; but the parties were left to carry the points at issue before the Courts in the usual manner, the award of the arbitrators being final, however, as to the amount of compensation. In cases of disputed possession, or for other sufficient reason to be certified by the arbitrators, the compensation-money was to be invested and held in security until one of the claimants obtained an order of Court for payment. But no dispute touching the property or its possession, nor any flaw in the title of the party by or from whom it was transferred to Government on the award of arbitrators, was to be allowed to defeat or disturb the title acquired by Government. And where the ostensible proprietor agreed to transfer the land amicably, the Government might cause proclamation to be made requiring all persons interested to prefer their claims on or before a certain date; and unless a claim had been preferred in pursuance of such proclamation, no suit could subsequently be brought against Government for either the land or compensation. "But nothing herein contained shall affect the liability of the party who may receive the value of any land or other property transferred to Government without having a good title to the same." No award was liable to be reversed or altered, except by regular suit on the ground of corruption or gross partiality. If the award was approved by Government, the surrender of the property might, if necessary, be enforced by the Magistrate. The costs of arbitration were to be paid by Government.

By Act I of 1850 these provisions of Regulation-law were extended to the Town of Calcutta; and Act XLII of the same year declared them applicable to the case of land taken up for railways. Powers were at the same time conferred for entering

upon the land in order to survey or set out the line of any proposed road, canal or railway; for taking immediate possession when necessary; and for the temporary occupation of land within 100 yards on either side of the centre line of the road. It was also provided that suits and claims for lands taken otherwise than under the Regulation were to be preferred within five years from the passing of the Act, after which period, if no claim had been preferred, the land was to vest absolutely in the Government, freed and discharged from all other claims.

In the Bombay Presidency, Act XXVIII of 1839 (an Act for the regulation of buildings in the Islands of Bombay and Colaba) laid down certain rules, amongst other things, for acquiring land for public purposes in the Presidency-Town (ss. 15—21). The Court of Petty Sessions was authorised to take up any land it required. If the Surveyor's estimate was accepted by the owner or other person in possession, the amount might be paid to him, and the Court thereupon acquired a title to the property. If the estimate was not accepted, the amount of compensation was to be determined by "a jury of twelve indifferent men resident on the Island," whose valuation was to be final and conclusive. This Act was extended for railway purposes by Act XVII of 1850.

In the Madras Presidency, the first law passed on the subject was Act XX of 1852. By that Act a declaration was to be made by Government that the land was needed for a public purpose, and if there was any hindrance to its immediate acquisition by purchase, the Government might thereupon enter on possession, and the land was thenceforward vested absolutely in Government, the liability of the transferror remaining unaffected, as under Reg. I of 1824. The provisions for determining the value of the land were also similar. The enquiry was to be conducted by the Collector or other officer specially appointed. If he and the parties interested agreed as to the amount of compensation and the parties entitled to it, he could pass an award; otherwise the matter was to be referred to arbitration, and the arbitrators were authorised not only to determine the amount

of compensation, but also to decide upon claims thereto, and to apportion it among the parties interested; and their award in this matter could only be set aside in a regular suit. Act XLII of 1850 was at the same time extended to the Madras Presidency. By Act I of 1854 both Acts were extended to the Presidency-Town of Madras.

All these local Acts were repealed by Act VI of 1857, which laid down one law on this subject for the whole of British India. Under that Act the principal modifications of the previous law were as follows:—A declaration that the land was required to be taken by Government at the public expense for a public purpose was to be made under the signature of a Secretary to Government, and such declaration was to be conclusive evidence that the land was required for a public purpose (s. 2). The Collector or other special officer was thereupon to take order for the acquisition of the land (s. 3). After marking out the land, making proclamation and serving notices (s. 4), he was to hold a summary enquiry on a fixed date; and if he and the persons interested agreed as to the amount of compensation, he was empowered to award the same, and if the parties also agreed as to the apportionment of the amount, such apportionment might be specified in the award (s. 5). If none of the parties attended, or if they were unable to agree with the Collector as to the amount of compensation, the matter was to be referred to arbitration (s. 6). If any question of title arose, the person deemed by the Collector to be in possession was taken to be the person interested for the purpose of determining the amount of compensation (s. 7). When the Collector had made an award or directed a reference to arbitration, he might take immediate possession of the land, which thenceforward was vested absolutely in the Government, free from all other estates, rights, titles and interests (s. 8). When a case was referred to arbitration, if the Collector and the persons interested could not concur in the appointment of a single arbitrator, they each nominated one (s. 10); and the two arbitrators so nominated appointed a third to act with them (s. 12). If no claimant attended, or if the persons

interested neglected or refused to appoint an arbitrator, then a single arbitrator was to be appointed by the Collector to arbitrate the matter, provided that such single arbitrator was not to be an officer of Government (s. 11). With the written consent of all the persons interested, the arbitrators were empowered to determine the apportionment of the compensation (ss. 14-15). The arbitrators were to be paid reasonable fees (s. 21), which were to be included as costs. Costs incurred for the purpose only of determining the compensation were to be paid by Government, unless the amount awarded did not exceed that tendered by the Collector, in which case each party bore his own costs. Costs incurred in determining the apportionment were to be borne by the parties (s. 22). Compensation might be given for damage done to adjoining land (s. 24), to be specified separately in the award (s. 25). The compensation was to be paid at the time of taking possession, or if this was not possible, interest at 6 per cent. would run from that date (s. 27). But the Collector might, if necessary, defer payment and invest the amount in Government Securities pending an order of Court (s. 29). An award could only be set aside by regular suit on the ground of corruption or misconduct of the arbitrators, and in case of reversal, the matter was again to be referred to arbitration (s. 31). A part of a house or manufactory was not to be acquired if the owner desired that the whole should be taken (s. 32).

Act VI of 1857 was subsequently amended by Act II of 1861, the provisions of which mainly refer to the temporary occupation and use of land, whether or not adjacent to that which was permanently required.

Act XXII of 1863 provided for taking land for works of public utility to be constructed by private persons or companies, and for regulating the construction and use of works on land so taken. It laid down rules for the preliminary proceedings to be taken and the registration of such works, for the taking of lands and the payment therefor, for the construction, inspection and public use of the works, for a Government lien on the works, and for other matters.

These three Acts (VI of 1857, II of 1861 and XXII of 1863) were replaced by Act X of 1870, and an attempt will now be made to indicate very briefly the principal changes introduced into the law by that Act.

It has been seen that, in cases where the Collector and the parties interested could not agree as to the value of the land, the law prior to Act X of 1870 provided that the matter should be left altogether to the decision of independent arbitrators, the Legislature being so careful to avoid the appearance of Government influence, that even when an award was reversed by a Court of Justice, the Court was not authorised to dispose of the question of compensation, but the matter had to be referred to a fresh set of arbitrators. It was found, however, in practice, that arbitrators not unfrequently made exorbitant awards, at times even far in excess of the amount claimed by the parties interested.* It was, therefore, thought desirable not only that a change should be made in the constitution of the tribunal which was to award the compensation in such cases, but that certain rules should be laid down to regulate the principles upon which the compensation should be awarded. Act X of 1870, accordingly, provides that when the parties cannot agree with the Collector as to the value of the land, the Collector shall refer the matter for the decision of the Civil Court; and for this purpose the Court is to be assisted by two assessors, one to be nominated by the Collector and the other by the parties. If the Judge agrees with one or both of the assessors, their award is final; but it is open to the Judge to differ from both assessors, in which case his decision will prevail subject to the right of appeal. The principles on which compensation is to be awarded are at the same time laid down in sections 24—26. The land is to be assessed at its market value, but by s. 42 an additional sum equal to fifteen per cent. will be paid by the Collector in consideration of the compulsory

* In asking leave to introduce the Bill, Mr. Strachey instanced one case in which the arbitrators had given Rs. 47,400 for a piece of land which the Collector had valued at Rs. 75; and another case in which they had awarded Rs. 1,01,400 for what the owner had asked Rs. 31,000.

character of the acquisition. It is also provided that damages may be awarded for severance, for injury to other property, for loss of earnings, and for expenses of removal when necessary. Other matters are specified which are not to be taken into consideration, and certain limits are laid down which the amount is not to exceed in certain cases.

This may be said to be the main distinctive feature of Act X of 1870, but another very important change is that, under the new law, all disputes of right and title in the land acquired must be referred to the Civil Court and decided by the Court in the acquisition-proceedings. Under Act VI of 1857 the person in possession was taken to be the owner for the purpose of determining the amount of compensation, and in case of dispute as to the title the parties were left to settle their differences in a regular suit. But, under the present law as interpreted by the Courts, no such suit will, in future, be entertained if the plaintiff was a party to the proceedings under this Act.

Both by Reg. I of 1824 and by Act VI of 1857 questions of apportionment might be decided by the arbitrators with the written consent of all the parties interested. Under Act X of 1870 the function of the assessors is limited to assisting the Judge in determining the amount of compensation. Questions of title and of apportionment are to be decided by the Judge sitting alone, and his decision on such questions is open to appeal.

Another important amendment is contained in s. 54, which provides that Government is not compelled to complete the acquisition, even though a declaration may have been issued, unless either an award has been made or a reference directed to the Court.

In case of urgent necessity the Collector is authorised by s. 17 to take immediate possession of any waste or arable land fifteen days after publication of the notice under s. 9 without waiting for the result of his summary enquiry. A similar provision was contained in Act XLII of 1850, but was omitted from Act VI of 1857. In the Statement of Objects and Reasons

it was said that the provision was borrowed from and analogous to art. 19 of the French law of 8th March 1810.

Lastly, as already remarked, Act XXII of 1863 has been repealed, and in its place the few general provisions contained in ss. 46—50 of the present Act have been enacted. By these sections power is given to acquire land under the Act for public undertakings conducted by private enterprise, subject to such rules and terms as may, from time to time, be laid down by the Government of India on the subject.

Such are the principal changes introduced by Act X of 1870. The Act has now been in force eleven years, and, on the whole, it is believed, has worked well. Possibly some of its provisions may appear to be vague or loosely worded, but as in course of time they receive judicial interpretation, this defect may be expected to disappear. In the following pages the rulings of the superior Courts have been noted under the sections of the Act to which they relate, and an attempt has also been made to illustrate the principles on which compensation should be awarded by decisions borrowed from the English Courts. As these principles have to be considered by Collectors and others whose business it is to acquire land needed for public purposes, it is hoped that the illustrations given may be found useful by them as well as by those who have to deal with the matter at a later stage in the event of a reference to the Court. And with the object of making the volume as complete a manual on the subject as possible for Bengal, the rules of the Local Government and of the local Board of Revenue have been incorporated in the work.

THE LAND ACQUISITION ACT, 1870.

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THE

LAND ACQUISITION ACT

BEING

ACT No. X of 1870

As amended by Acts No. IX of 1871, No. XII of 1876, and No. XIII of 1879.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 1st April, 1870.)

An Act for the acquisition of land for public purposes and for Companies.

Preamble.

WHEREAS it is expedient to consolidate and amend the law for the acquisition of land needed for public purposes and for Companies, and for determining the amount of compensation to be made on account of such acquisition; It is hereby enacted as follows :-

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Land Acquisition Act, 1870:"

Local extent.

It extends to the whole of British India;

Commencement.

and it shall come into force on the first day of June 1870.

Repeal of Acts.

2. On and from such day Act No. VI of 1857 (*for the acquisition of land for public purposes*), Act No. II of 1861 (*to amend Act No. VI of 1857*), and Act No. XXII of 1863 (*to provide for taking land for works of public utility to be constructed by private persons or Companies, and for regulating the construction and use of works on land so taken*) shall be repealed.

All references made to any of the said Acts in subsequent Acts, orders or contracts shall be read as if made to this Act.

A brief summary of the former law is given in the Introduction.

Interpretation-clause.

3. In this Act—

'Land.'

The expression 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

Under Act VI of 1857 the word 'land' was defined to extend to tenements and hereditaments of any tenure, and all houses, buildings, trees or appurtenances thereupon, as well as land. The present definition is almost as wide as it is possible to make it.

The Act is silent as to mines and minerals. In England, railway companies are not entitled to the minerals underlying the land purchased by them, but they remain the property of the original owner, who cannot work them, however, without giving notice to the company, and the company then has the option of purchasing them at a fair price. Minerals thus form an exception to the rule that the compensation is to be assessed once for all.

'Person interested.'

The expression 'person interested' includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act:

That is to say, every claimant must be treated as a person interested until his claim has been adjudicated upon. So Reg. I.

of 1824 spoke of persons having *or claiming to have* an interest. By Act VI of 1857 the term included "all persons interested in the land, either for life, or for years, or in remainder, reversion or succession, and all mortgagees, leaseholders or tenants, not being tenants by the month or at will, of such land." A farmer (*ijaradar*) was accordingly held to be a person interested—*Nuzeerooddeen Ahmed* v. *The Railway Commissioners and others*, 1 Hay, 157; Marsh., 91. A ryot with a right of occupancy is a person interested, inasmuch as he presumably holds at beneficial rates, and could not be ejected by his zemindar without compensation. See Board's Rule 21 A. See also *Godadhar Dass* v. *Dhunput Sing*, I. L. R., 7 Calc. 585. By the English Statute no person is entitled to compensation who has "no greater interest than as a tenant for a year or from year to year,"—that is, who has less than a year of his term unexpired at the time when he is required to give up possession—*Reg.* v. *Great Northern Railway*, 46 L. J., Q. B. 4. By Act VI of 1857, s. 7, when any question arose respecting the title to the land or any rights or interests therein between two or more persons making conflicting claims in respect thereof, the person deemed to be in possession as owner or in receipt of the rents as being entitled thereto, was held to be the person interested for the purpose of determining the amount of compensation, the other person or persons being left to establish their right by suit under ss. 28-30—*Chundi Churn Chatterjee* v. *Biddoo Bodon Banerjee*, 10 W. R. 48. Under the present Act such questions are referred to the Court under ss. 15 and 38.

'Collector.'

The expression 'Collector' means the Collector of a District, and includes a Deputy Commissioner and any officer especially appointed by the Local Government to perform the functions of a Collector under this Act:

See Board's Rules 1—2.

Court.'

The expression 'Court' means, in the Regulation Provinces, British Burma and Sindh, a principal Civil Court of original jurisdiction,

and in the Non-Regulation Provinces other than British Burma and Sindh, the Court of a Commissioner of a Division,

unless, when the Local Government has appointed (as it is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression 'Court' means the Court of such officer:

So much of this section as declares the Commissioner of a Division to be a principal Civil Court of original jurisdiction in Oudh, is repealed by Act No. XIII of 1879, s. 2.

'Company.'

The expression 'Company' means a Company registered under the Indian Companies' Act, 1866, or formed in pursuance of an Act of Parliament, or by Royal Charter or Lettres Patent;

'Entitled to act.'

and the following persons shall be deemed persons 'entitled to act' as and to the extent hereinafter provided (that is to say)—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted.

PART II.

ACQUISITION.

Preliminary Investigation.

Power to enter and survey.

4. Whenever it appears to the Local Government that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the local Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen,

to enter upon and survey and take levels of any land in such locality:

to dig or bore into the subsoil:

to do all other acts necessary to ascertain whether the land is adapted for such purpose:

Power to mark out line.

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon:

to mark such levels, boundaries and line by placing marks and cutting trenches;

Power to clear land.

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without pre-

Previous notice of entry.

viously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage.

5. The officer so authorized shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid; and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

See Board's Rules 3 - 9. The distinction should be observed between the notification that land is *likely to be* needed under s. 4 and the declaration that land *is* needed under s. 6.

For penalties on obstruction, see s. 51.

Declaration of intended Acquisition.

Declaration that land is required for a public purpose.

6. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid out of public revenues, or out of some Municipal Fund, or by a Company.

Contents of declaration.

The declaration shall be published in the local official Gazette, and shall state the District or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

Declaration to be evidence.

The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case

may be; and, after making such declaration, the Local Government may acquire the land in manner hereinafter appearing.

Not it is not absolutely necessary that Government should acquire the land after making declaration (s. 54).

See Board's Rules 10—14 and 45.

After declaration, Collector to take order for acquisition.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a Company, the Local Government, or some officer authorized by the Local Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

See Board's Rules 15—19.

Land to be marked out and measured.

Plan.

8. The Collector shall thereupon cause the land (unless it has been already marked out under section four) to be marked out. He shall also cause it to be measured, and (if no plan has been made thereof) a plan to be made of the same.

The Collector must disburse all costs of measurement.—Board's Rule 44.

For penalties on obstruction, see s. 52.

It is to be remarked that the Act does not provide for measurement of the land in the presence of the parties interested or for the settlement of disputes as to its area. Any dispute of the kind should be brought to the notice of the Collector at the time of the enquiry under s. 11. In cases of reference to the Court, the extent of land needed is certified to the Court by the Collector under s. 18, and it is doubtful whether the Court would be at liberty to entertain objections as to the measurement.

Notice to persons interested.

9. The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the

Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him.

Contents of notice.

Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

Notice to occupiers.

The Collector shall also serve notice to the same effect on the occupier (if any) of such land, and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the Revenue District in which the land is situate.

In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post.

See Board's Rule 20.

This section provides for the publication of a *general* notice on or near the land, and for the service of *special* notices on the occupier and other persons interested. The general notice should be published before issue of the special notices.

The notices should state the area and boundaries of the land as ascertained under s. 8, and unless varied in the course of the enquiry under s. 11, the extent of the land certified to the Court under s. 18 should agree with that mentioned in the notices.

As to the mode of service of notice, see s. 51.

By the next section the intentional omission to file a statement of claim is apparently made a penal offence under s. 176 of the Indian Penal Code.

Entitled to act.—See definition in s. 3.

10. The Collector may also require any such person to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Power to require statements as to names and interests.

Every person required to make or deliver a statement under this section or section nine, shall be deemed to be legally bound to do so within the meaning of sections one hundred and seventy-five and one hundred and seventy-six of the Indian Penal Code.

Persons required to make statements to be deemed legally bound to do so.

See Board's Rule 21.

This section is new, and is found of great use when the parties interested are not known to the Collector.

In order to be able to take criminal proceedings under the latter clause of this section, a period should be fixed in the notice within which the statement referred to should be delivered.

Section 175 of the Indian Penal Code provides a penalty for the intentional omission to produce or deliver up any document to any public servant, and s. 176 for the intentional omission to give any notice or to furnish information on any subject to any public servant. In either case the offender may be punished with simple imprisonment for one month or fine not exceeding five hundred rupees or both.

Enquiry into Value and Claims.

11. On the day so fixed, the Collector shall proceed to enquire summarily into the value of the land and to determine the amount of compensation which in his opinion

Enquiry into value and amount of compensation.

should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice.

Tender.

For the purpose of such enquiry, the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and (as far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure.

Power to summon witnesses.

See Board's Rule 95.

The Collector "*shall* tender such amount to the persons interested *who have attended*." The tender is obligatory if *any* person interested attends the enquiry; and for this reason the Collector is declared to be entitled to his costs when the amount awarded by the Court does not exceed the sum tendered (s. 33).

But the Collector can only make an award if *all* the persons interested have attended and accept his tender (ss. 14, 15).

The Collector should always certify in his statement of reference under s. 18 whether the persons who attended were willing to accept or refused his tender. This information is necessary to enable the Court to judge whether assessors will be required, and also to decide by whom the costs should be paid (s. 34).

For the provisions regarding the summoning and enforcing the attendance of witnesses and compelling the production of documents, see ss. 130 and 159—178 of the Code of Civil Procedure.

12. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time postpone the enquiry to a day to be fixed by him.

Postponement of enquiry.

A claimant is properly one who has made a claim, but as the notice requires the persons interested to appear personally or by agent to prefer their claims on the day fixed, the term 'claimant' is probably used as equivalent to 'person interested.'

13. In determining the amount of compensation the Collector shall take into consideration the matters mentioned in section twenty-four and shall not take into consideration any of the matters mentioned in section twenty-five.

Matters to be considered, and matters to be neglected.

See Board's Rule 23 and Government Rules 1—6. See also notes under ss. 24 and 25.

Award by Collector.

14. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same. Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Collector and the persons interested, of the value of the land and the amount of compensation allowed for the same.

Award in case of agreement as to compensation.

Award to be filed and to be evidence.

The Collector can only make an award if *all* the persons interested agree as to the amount of compensation. So, if all the persons interested agree as to the apportionment, the particulars of such apportionment may be specified in the Collector's award (s. 37); but the Collector has no power to apportion the compensation if the persons interested cannot agree among themselves (s. 38). He should, however, point out to them the delay and expense of a reference to the Court, and endeavour to persuade them to come to an amicable settlement.

For the rules as to apportionment, see note to s. 39.

15. When the Collector proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which it may have been postponed,

Reference where no claimant attends, or if Collector and persons interested cannot agree.

if no claimant attends,

or if the Collector considers that further enquiry as to the nature of the claim ought to be made by the Court,

or if any person whom the Collector has reason to think interested does not attend,

or if the Collector is unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed,

or if, upon the said enquiry, any question respecting the title to the land or any rights thereto or interests therein arise between or among two or more persons making conflicting claims in respect thereof,

the Collector shall refer the matter to the determination of the Court in manner hereinafter appearing.

By s. 11 the Collector is required to enquire summarily into the value of the land, and to determine the amount of compensation. Having done this, he is bound to tender the amount to those persons interested (if any) who have attended, and if they all attend and accept the amount tendered, he is bound to award it; while, on the other hand, if they do not all attend or refuse to accept the amount tendered, he is bound to refer the matter to the Court. A person interested includes all persons claiming an interest in the compensation, and it may therefore happen that conflicting claims are preferred. In such cases, the law does not empower the Collector to decide between such conflicting claims, but directs that they be referred for decision to the Court. This section, accordingly, states five cases in which a reference is to be made to the Court. In four of these cases the subject-matter of the reference is the amount of compensation; in the last, the determination of the persons who are entitled to it. A further question, the proper apportionment of the compensation among the persons entitled to it, is provided for by ss. 37—39.

The five cases provided for in this section are these:—

(1.) *If no claimant attends.* In this clause, as in s. 12, the term 'claimant' is, probably, equivalent to 'person interested.' If no such person attend, it is impossible for the Collector to make a tender; but by s. 19, he is bound to certify to the Court the

amount of compensation he is willing to give; and by s. 19 the Court is also bound in such a case to issue a general notice to all persons interested in the land.

(2.) The next clause provides for a case in which the Collector entertains doubts as to the *nature of the claim* made or the application of the principles laid down in ss. 24—25; as, for instance, where a claim is made for damages and the Collector is of opinion that the claim should be investigated and the damages assessed by the Court. If any of the persons interested are present, however, the Collector must, by s. 11, make a tender. If the tender is accepted, an award must follow; if it is refused, the case would fall under cl. (4).

(3.) *If any person whom the Collector has reason to think interested does not attend.* The Collector is bound to make a tender to those who are present, though he cannot make an award.

(4.) *If the Collector is unable to agree with the persons interested who have attended as to the amount of compensation.* In this case also a tender must be made.

(5.) *If upon the enquiry any question of title or right arises.* In this case the parties present may all agree as to the amount of compensation, and if so, there is no objection to the Collector making an award, leaving it to the Court to determine as to the persons who are entitled to it. Under any circumstances he must make a tender (s. 11), and he should state for the information of the Court whether or not it is accepted. If the tender is accepted, the Court should probably proceed under s. 31, and not under Part III of the Act. See note to s. 21.

In the first four cases the subject-matter of the reference,—*viz.*, the amount of compensation,—will be determined by the Judge and assessors; in the last case, questions of title, &c., will be tried by the Judge sitting alone.

Of course the same case may fall under more than one of these five clauses. For instance, all the persons interested may not be present, those present may not be willing to accept the amount tendered, and may have preferred conflicting claims *inter se*, and at the same time the Collector may consider further enquiry into the nature of the claim to be necessary.

It has been ruled in England, that if the liability to make compensation is denied altogether, the question must be referred to the regular tribunals.—*Reg.* v. *Metropolitan Commissioners of*

Sewers, 1 El. & Bl. 702. The fact of the claimant being entitled to the compensation he seeks, is a condition precedent to his right to avail himself of the machinery provided by the Act. If he has no title to compensation, the whole proceedings before the arbitrator or a jury are *coram non judice.—Reg.* v. *Cambrian Railway Co.*, L. R., 4 Q. B. 320.

Taking Possession.

Power to take possession.

16. When the Collector has made an award under section fourteen, or a reference to the Court under section fifteen, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

See Board's Rules 2A, 37 and 46.

Under Act VI of 1857 it was ruled that, "by the 8th section of that Act, the land became vested in the Government absolutely and free from every right or interest therein of whatever description possessed either by the former proprietors or by other persons" —*The Collector of the* 24-*Pergunnahs* v. *Nobin Chunder Ghose*, 3 W. R. 27;—such as a right of way previously enjoyed by the public over the land.—*In the matter of the Petition of H. B. Fenwick*, 14 W. R., Cr. R. 72; 6 B. L. R., Ap. 47. But the compulsory acquisition of land will not justify a nuisance—*Rajmohun Bose* v. *East Indian Railway Co.*, 10 B. L. R., 241.

Power to take possession in cases of urgency.

17. In cases of urgency, whenever the Local Government so directs, the Collector (though no such reference has been directed or award made) may, on the expiration of fifteen days from the publication of the notice mentioned in the first paragraph of section nine, take possession of any waste or arable land needed for public purposes or for a Company.

Such land shall thereupon vest absolutely in the Government free from all encumbrances.

The Collector shall offer to the persons interested compensation for the standing crops and trees (if any) on such

land; and in case such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions herein contained.

See Board's Rule 38.

This section is new, but a similar provision was contained in Act XLII of 1850, s. 5. That Act, however, provided that the amount and distribution of the compensation should be afterwards ascertained—a matter which is left to be inferred in the present section.

The last clause does not refer to the previous section (16), because it is intended that the crops and trees shall be either included in the claim or removed by the owner.

PART III.

REFERENCE TO COURT AND PROCEDURE THEREON.

Collector's statement on reference to Court.

18. In making a reference under section fifteen, the Collector shall state for the information of the Court, in writing under his hand,

(*a*) the situation and extent of the land needed;

(*b*) the names of the persons whom he has reason to think interested in such land;

(*c*) the amount awarded for damages and paid or tendered under sections five and seventeen, or either of them, the amount of compensation tendered for the land under section eleven, or, if no claimant has attended pursuant to the notice mentioned in section nine, the amount of compensation which the Collector is willing to give to the persons interested, and

(*d*) the grounds on which the amount of compensation was determined.

(*a*.) The description of the land should agree with that in the notices under s. 9, (*a*); if there is any variation, it should be duly explained.

(*b.*) The Collector should also give the names of all persons who *claim* to be interested in the land. The residence of each person should also be given as far as possible, in order that there may be no difficulty or delay in the service of notices by the Court.

(*c.*) The object of reporting to the Court the amount of damages awarded under s. 5 is not clear, as the Collector's decision is final.

(*d.*) The 'amount of compensation' in this clause means, of course, the amount which the Collector has either tendered or is willing to give.

As to cases in which it is doubtful whether the land is revenue-paying or revenue-free, see Government Rule VII.

Service of notice.

19. The Court shall thereupon cause to be served on each of the persons so named a notice requiring him (if he has not made a claim under section nine) to state to the Court, on or before a day to be therein mentioned, the sum which he claims as compensation for his interest in the land so needed.

The Court shall also cause a notice to be served on the Collector and each of such persons requiring them to appoint, on or before a day to be therein mentioned, two qualified assessors (one to be nominated by the Collector, and the other by the persons interested) for the purpose of aiding the Judge in determining the amount of the compensation.

If no claimant has attended pursuant to the notice mentioned in section nine, the Court shall cause to be affixed on some conspicuous place on or near the land needed a notice to the effect that, if the persons interested in such land do not, on or before a day to be therein mentioned, appear in Court and state the nature of their respective interests in the land and the amount and particulars of their claims to compensation, and nominate a qualified assessor, the Court will proceed to determine such amount.

By the first clause of this section the Court has to serve a notice on each person named in the Collector's statement of reference

requiring him to make a claim by a certain date if he has not already done so. Even if he has made a claim before the Collector, this notice must nevertheless be served upon him. By the second clause a notice must also be served upon each of such persons requiring him to nominate an assessor,—the 'such persons' spoken of in this clause obviously meaning the persons named in the Collector's statement of reference, not such of them only as make a claim for the first time before the Court. These two notices may be contained in the same process, and the same date may be fixed for the filing of the claim and the nomination of an assessor. By the third clause a similar notice must *also* be affixed on or near the land in cases in which no person interested has attended the Collector's enquiry.

If the claim is not made on or before the date fixed, it cannot be admitted unless the Judge is satisfied that there was sufficient reason for the omission (s. 26).

The petition of claim is exempted from stamp-duty by the Court Fees Act VII of 1870, s. 19, cl. xxii.

As to service of notice, see s. 51.

A qualified assessor.—By Reg. I of 1824 arbitrators were required to be persons of respectability, residents of the pergunnah or other local division, and impartial. The Rule (39) laid down by the Board that the assessor to be nominated by the Collector should, ordinarily, be an officer of Government specially selected for that purpose, seems open to objection. Such a rule, no doubt, tends to diminish the costs of arbitration (s. 31), but it offers a direct inducement to the other side to nominate an interested person, such as their agent or pleader, and makes it difficult for the Court to reject such a nominee as disqualified. The object of the Legislature in providing that the amount of compensation shall be determined with the aid of assessors is not, it is submitted, that each party shall have his own advocate on the Bench, but that the Judge shall have the assistance of practical men of business with local or special knowledge, who, however, should be as independent and impartial as the Judge himself. As Mr. Strachey said in introducing the Bill, the interests of the parties may be protected by the presence of assessors, but they should deliberate and act in consultation with the Judge, and the whole proceedings should go on in open Court, so that when the valuation of property is

made, all parties interested may know exactly the grounds of the determination arrived at.

The nomination of an assessor should be *in writing*. Act VI of 1857, s. 10, said:—"In every case the appointment (of an arbitrator) shall be in writing, and neither of the parties to the arbitration shall have power to revoke the same without the consent of the other."

Power to appoint an assessor.

20. In case of failure to nominate either of such assessors within the time so specified, the Judge shall himself appoint an assessor in his stead.

Reg. I of 1824 provided that each party should appoint two arbitrators; if more than two arbitrators were appointed by the various persons interested, the Judge or other officer concerned was to select two by lot. If only two were nominated, they were to act, no matter whether or not they were nominated by all the persons interested. If only one, then the Judge nominated only one. If none, then the Judge appointed two persons only to arbitrate the matter.

By Act VI of 1857, s. 10, if several persons having a joint interest in the land would not agree in the appointment of an arbitrator, such disagreement was to be deemed a refusal to appoint under s. 11.

If several persons had distinct and separate interests, and they could not agree in the appointment of an arbitrator, the Collector might either make each separate interest the subject of a distinct arbitration, or he might select one of the persons interested to represent the others, and let him make the nomination on behalf of all.

The present Act makes no such distinction. If the persons interested cannot agree among themselves as to the nomination, the Judge should select the nominee best qualified, having regard also to the respective value of the interests affected.

Determination of amount.

21. As soon as the assessors have been appointed, the Judge and the assessors shall proceed to determine the amount of the compensation.

When the assessors have been appointed, a date should be fixed for the hearing of the case.

The function of the assessors is merely to assist the Judge in determining the amount of compensation (s. 19); they have no voice in the decision of points of law (s. 28), or questions of title (s. 39). There is nothing in the Act which gives the Judge and assessors sitting together power to determine the right to compensation, or the title to the land for which compensation is to be assessed.—*In the matter of the Petition of Abdool Ali*, 15 B. L. R. 197. Even as regards the amount of compensation, the decision rests with the Judge (s. 30), though if the assessors are agreed, he will probably not differ from them except under special circumstances.

So in England it is not competent to the jury to determine the right of a claimant to compensation. It is for the Court to decide upon the right or title of the party to be compensated, and for the jury to settle the amount, so that the amount has to be tried first, and the title last.—*Reg.* v. *London and North-Western Railway Co.*, 3 El. & Bl. 465; *Read* v. *Victoria Station and Pimlico Railway Co.*, 32 L. J., Exch. 170; *Horrocks* v. *Metropolitan Railway Co.*, 4 B. & S. 315.

It follows from the above that when there is no dispute as to the amount of compensation, it is not necessary to appoint assessors. If none of the persons interested attend, or if all those who appear before the Court agree to accept the Collector's tender, the Judge may at once make an award on the basis of that tender, and proceed, when necessary, to determine the question of title or apportionment.

There is no objection to the Judge trying such questions at the same time that the amount of compensation is being determined, and the practice is generally convenient to all parties concerned. To make two or more cases out of one and the same reference is only productive of additional expense and delay.

Under Act VI of 1857, ss. 14-15, questions of apportionment might also be referred to the arbitrators with the written consent of all the persons interested.

Appointment of new assessor.

22. If before such amount is determined, any of the assessors dies or desires to be discharged, or refuses or neglects, or becomes incapable to act, the party by

whom he was appointed may appoint some other qualified person to act in his place.

If the assessor so dying, or desiring to be discharged, or refusing, or neglecting or becoming incapable, were appointed by the Judge,

or, in the case of an assessor appointed by either party, if for the space of seven days after notice from the Court for that purpose the party who appointed such assessor fails to appoint another,

the Judge shall appoint some other qualified person in his stead.

Powers of new assessor.

Every assessor so substituted shall have the same powers as were vested in the former assessor at the time of his so dying or desiring to be discharged, or refusing or neglecting or becoming incapable.

When a new assessor is appointed after the hearing of the case has commenced, it is not absolutely necessary to take the evidence again *de novo* (s. 191, C. C. P.) And under no circumstances should either party be allowed to take advantage of the opportunity to set up a new case.

Proceedings to be in open Court.

23. Every proceeding under section twenty-one shall take place in open Court, and all persons entitled to practise in any Civil Court shall be entitled to appear, plead and act, or to appear and act (as the case may be), in such proceeding.

'*Entitled to practise.*' This does not, apparently, authorise the appearance or acts of recognized agents under ss. 33—41, C. C. P. Certain agents are recognized, however, in s. 9.

Matters to be considered in determining compensation.

24. In determining the amount of compensation to be awarded for land acquired under this Act, the Judge and assessors shall take into consideration—

First, the market-value, at the time of awarding compensation, of such land;

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such land from his other land.

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings; and

Fourthly, if, in consequence of the acquisition, he is compelled to change his residence, the reasonable expenses (if any) incidental to such change.

Sections 24—26 lay down the principles upon which compensation is to be awarded, the two first sections being applicable to the enquiry before the Collector (s. 13) as well as to that before the Court. The three sections are to be read over to the assessors before they give their opinion (s. 20). Section 24 enumerates four matters that are to be taken into consideration in awarding compensation; section 25 enumerates seven matters (two of which are not to be taken into consideration); and section 26 prescribes certain rules limiting the amount of compensation in certain cases.

In considering these matters, the remark of *Lord Lyndhurst* in *East and West India Docks and Birmingham Junction Railway Co. v. Gattke* (20 L. J., Ch., 217) should be borne in mind:—"These Acts are to be liberally expounded in favour of the public, and strictly expounded against the Government or Company taking the land."

(1.) *The market-value at the time of awarding compensation.*—The market-value is the price which an ordinary private purchaser might be expected to give for the property, were the owner desirous of parting with it. There are ordinarily three circumstances which serve to indicate this market-price:—(1) the price at which the land taken, or any part of it, has sold on previous occasions; (2) the present rental of the property, which may be capitalized at so many years' purchase; and (3) the price at which similar land in the neighbourhood has been sold. Such instances,

as a rule, are not a fair test of the true market-value, the prices obtained being often far above or below the real value of the property.

In *Premchand Burral and another* v. *The Collector of Calcutta* (I. L. R., 2 Cal. 103) it was held that the fairest and most favourable principle of compensation to the owners was to enquire "what is the market-value of the property, not according to its present disposition, but laid out in the most lucrative and advantageous way in which the owners could dispose of it." In that case GARTH C. J. (MACPHERSON J. concurring) said that to capitalize the present rental of the property at so many years' purchase was not always a fair way of arriving at the market-value. "When Government takes property from private persons under statutory powers, it is only right that those persons should obtain such a measure of compensation as is warranted by the price of similar property in the neighbourhood, without any special reference to the uses to which it may be applied at the time when it is taken by the Government, or to the price which its owners may previously have given for it. Of course, if it can be satisfactorily shown that the purposes to which the land is applied are as productive as any other to which it is applicable, or that the price given by the owners is its full market-value, it would be very just to assess the compensation upon that basis." It is submitted, however, that, in calculating the value of the land as laid out to the best advantage, the cost of so laying it out would have to be taken into consideration on the other side.

In many parts of the country transfers of land are of unfrequent occurrence, and the rental forms the only basis on which the market-value can be ascertained. In such cases, however, the rental on which the calculation is based should be a rack-rent payable by tenants-at-will, and not the rates payable by ryots with permanent or occupancy rights. The number of years' purchase at which it should be capitalized will depend on various circumstances, such as the locality and the demand for land, the prevailing rate of interest, and the price of Government securities. A purchaser of land even in the mofussil would probably expect to get at least five per cent. on his investment, while in the case of house-property, in Calcutta say, he would expect eight or ten per cent. to compensate him for the cost of repairs, rates and taxes, and the chance of the property lying unoccupied. "Every

case must depend on its own circumstances, on the evidence given and the nature of the property. The number of years' purchase which it would be right to allow with regard to one sort of property, might not be a fair allowance for other kinds of property, and we wish to guard ourselves against being understood as laying down any rule as to the number of years' purchase which ought to be allowed."—*Reysham* v. *Bantanath Mullick*, Pl. B. L. R. 285.

See Board's Rules 12 and 23.

At the time of awarding compensation. That is, by the Collector or the Court, as the case may be. See Board's Rule 36. What is intended apparently is, that the land shall be assessed at the value it has at about the time when it is acquired, not at a value it may have commanded in the past, nor at a prospective estimate of what it may command in the future. It could never have been intended that if between the date of taking possession and the date of award, Government had dismantled valuable buildings standing on the land, compensation should not be paid for such buildings; nor on the other hand if, after taking possession and before the date of the award, Government had improved the land, that compensation should be awarded for such improvements.

In *Hillcoat* v. *Archbishops of Canterbury and York* (L. R., 10 C. B. 327) Lord Truro C. J. observed that "the value was to be ascertained in relation to the situation of the property generally, and its applicability to ordinary purposes, discharged of any prescribed appropriation." But see *Stebbing* v. *Metropolitan Board of Works* (L. R., 6 Q. B. 37), where in a similar case of a churchyard being taken which had been closed under an order in Council, it was held that the plaintiff was entitled to compensation only for the loss that he had sustained by being deprived of his interest in the churchyard, and not according to the value of which the land would be to the defendants after they had acquired it.

(2.) *Damage by severance.*

By the construction of a railway part of an owner's land was taken and several acres were severed from the rest and all access cut off; the land was at the time the railway was constructed agricultural, but it had a prospective value for building;—*Held* that the compensation jury, valuing it as building land, might estimate the damage by severance as if all access were cut off—*The Queen* v. *Brown*, L. R., 2 Q. B. 630.

(3.) *Damage by reason of the acquisition injuriously affecting the other property of the person interested, or his earnings.*

In order that a person may be entitled to compensation under this clause, two things seem to be necessary—

1*st.* He must be a person interested, or claiming to have an interest, in the land to be acquired.

2*nd.* His *other* property, moveable or immoveable, or his earnings must be *injuriously affected* by the acquisition.

What constitutes a sufficient interest in the land acquired to entitle a person to compensation, may sometimes be a matter of considerable difficulty, particularly when the interest is merely an indirect benefit arising out of the land. A person will probably be considered interested in the land to be acquired, and so entitled to compensation if within certain limitations *any* of his property or his earnings are injuriously affected by reason of the acquisition, even though he himself may neither own nor occupy any of the land actually acquired. The principle in question is borrowed from the law and practice in England, and though it is not possible to reconcile the various decisions on the subject, it may not be without its use to consider some of the more important of them. It must be remembered, however, that the wording of the English Statutes is different from that of the present Act. Section 68 of the Land Clauses Consolidation Act, 1845, runs to this effect:—"If any party shall be entitled to any compensation in respect of any lands or of any interest therein which shall have been taken for, *or injuriously affected by*, the execution of the works," he is to follow the course therein directed as to having a jury summoned, &c., to determine the amount of compensation. And section 6 of the Railway Clauses Consolidation Act, 1845, after extending the provisions of the Land Clauses Consolidation Act, contains these words:—"And the Company shall make to the owners and occupiers of, and all other parties interested in, any lands taken or used for the purposes of the railway, *or injuriously affected by the construction thereof*, full compensation for the value of the lands so taken or used, and *for all damage sustained by such owners, occupiers*, and other parties by reason of the exercise, as regards such lands, of the powers" vested in the Company. Under these Statutes the following are the principal of the later rulings:—

In *Eagle* v. *Charing Cross Railway Company* (L. R., 2 C. P.

638) it was held that an easement is an interest in land for which compensation may be claimed under the Land Clauses Consolidation Act. In that case the plaintiff was awarded compensation for a diminution of light caused by the erection of the defendants' works, whereby the plaintiff's premises were rendered less convenient and suitable for the purposes of his trade.

So it has been held that the house and shop adjoining a railway is entitled to compensation for damage sustained by him in consequence of the dust and dirt from the railway works having penetrated his shop and damaged his goods.—*Knock* v. *Metropolitan Railway Co.*, L. R., 4 C. P. 131.

In *Beckett* v. *Midland Railway Company* (L. R., 3 C. P. 82) the defendants had erected an embankment on a portion of the highway opposite to the plaintiff's house, thereby narrowing the road from fifty to thirty-three feet, and thus diminishing the value of the house for letting or selling and obstructing the access of light and air to it:—*Held*, that this was such a permanent injury to the estate of the plaintiff in the premises as to entitle him to compensation. See also *Reg.* v. *St. Luke's*, L. R., 7 Q. B. 148.

So it was held that the claimant's house was injuriously affected when the public road immediately in front of it was lowered seven feet.—*Moore* v. *Great Southern and Western Railway Co.*, 10 Ir. C. L. R. 46; and similarly when the road was raised ten feet.—*Tuohey* v. *Great Southern and Western Railway Co*, 10 Ir. C. L. R. 98; *Reg.* v. *Eastern Counties Railway Co.*, L. R., 2 Q. B. 347. A farm was held to be injuriously affected by the cutting off of a stream that used to flow through it.—*Little* v. *Dublin and Drogheda Railway Co.*, 7 Ir. C. L. R. 82. So a wharf by the construction of a railway between it and the river.—*Bell* v. *Hull and Selby Railway Co.*, 6 M. & W. 699. So where a colliery was inundated by the diversion of a brook.—*R.* v. *North Midland Railway Co.*, 2 Rail. Ca. 1. In *Chamberlain's* case—a leading authority—a railway company made an obstruction and deviation in the public road so that a part of it which ran in front of some newly-built houses was less used as a thoroughfare than formerly, and the houses were thereby rendered less suitable for shops. It was held that they were injuriously affected and that the owner was entitled to compensation.—*Chamberlain* v. *West End of London and Crystal Palace Railway Co.*, 31 L. J., Q. B. 201; 32 *ibid* 173.

In *Senior* v. *Metropolitan Railway Company* (32 L J., Exch.,

225), the plaintiff carried on the business of a tailor, selling ready-made clothes exhibited by him in a window of his shop. The Company, in the execution of works, obstructed certain streets, in consequence of which the street in which the plaintiff's shop was situated was less used and frequented as a thoroughfare, and the plaintiff's business fell off. It was held that the loss of trade was an injury to the value of the land itself, and therefore the subject of compensation under the Land Clauses Consolidation Act. This decision was subsequently overruled, however, by *Ricket* v. *Metropolitan Railway Company*.

In *Ripley* v. *Great Northern Railway Company* (L. R., 10 Ch. 435), a railway company took land on which cotton mills would probably have been built, and the owner had other land on which he had built a reservoir from which water might be supplied to such cotton mills when built. *Held*, that evidence was properly taken as to the profits which might have been derived from supplying water to the mills when built, and that compensation was properly awarded for those profits.

In *The Caledonian Railway Company* v. *Ogilby* (2 Macq. Sc. App. 229), "a public road was, under the sanction of an Act of Parliament, crossed by a railway on a level, and gates were placed across the road; and it was held by the House of Lords that the owner of a house near the newly-erected gates had no claim for compensation for the inconveniences occasioned to him. The owner of the house had no other right over the road than that which belonged to the public generally, and the erection of the gates across the road where the railway crossed it upon a level was essential to the public safety. It was doubtful whether the owner of the house sustained any injury different in kind, though it might be greater in degree, from that of the rest of the public; and therefore it was questionable whether he could have maintained an action if the obstruction had been created without the authority of Parliament. But in *Glover* v. *The North Staffordshire Railway Company* (16 Q. B. 912), the plaintiff had a private roadway appurtenant to his farm, which was obstructed by the Company's works. His land, therefore, was injuriously affected, and, as Mr. Justice Wightman said, 'supposing no Act of Parliament had passed, and that had been done which was done, an action would have been maintainable.'" *Per* Lord CHELMSFORD in *Ricket* v. *The Metropolitan Railway Company*.

In *The Queen* v. *Metropolitan Board of Works* (L. R., 4 Q. B. 358) "the occupier of premises near the Thames had been accustomed to exercise a public right of drawing water from the river and to use a right of way or access to the river for that purpose, and also to resort to and use a public draw lock for loading and unloading barges. In the execution of works authorized by the Thames Embankment Act, the defendants caused an embankment to be erected by which the access to the river was practically cut off, and the access to the dock by barges was attended with difficulty and danger. It was held that the damage complained of was one for which the occupier of the premises was not entitled to compensation; that the injury was of a personal nature, the right interfered with being one which he possessed in common with the public, though, living near, he exercised it more frequently than others. There can be no doubt that that case was properly decided, as there was nothing to show that the rights obstructed were in any peculiar manner connected with the claimant's premises, nor was there any finding that the premises were by the obstruction diminished in value. It is a case precisely similar to that of *The Caledonian Railway Company* v. *Ogilvy*." *Per* Lord CHELMSFORD in *Metropolitan Board of Works* v. *McCarthy*.

In *Richet* v. *Metropolitan Railway Company* (L. R., 2 H. L. 175) Lord CRANWORTH said:—"Both principle and authority seem to me to show that no case comes within the Statute unless when some damage has been occasioned to the land itself in respect of which, but for the Statute, the complaining party might have maintained an action. The injury must be actual injury to the land itself, as by loosening the foundations of buildings on it, obstructing its light, making it inaccessible by lowering or raising the ground immediately in front of it, or by some such physical deterioration. Any other construction of the clause would open the door to claims of so wide and indefinite a character as could not have been in the contemplation of the Legislature." In that case the plaintiff was the occupier of a public-house situated by the side of a public footway. In the exercise of their powers the railway company had temporarily obstructed streets leading to this footway, so as to make the access to the public-house inconvenient, and the plaintiff claimed compensation in respect of the interruption to his business and injury to his trade consequent on those obstructions. Lord WESTBURY expressed the opinion that "the

word 'injuriously' does not mean 'wrongfully' or 'unlawfully,' nor does it imply that compensation is limited to cases where the act done is such as, but for the powers given, would be a tort at common law; the words mean 'damnously affected' only." Although Lord Westbury's view was overruled in that and subsequent cases, his remarks may be quoted at length in this place:—

"In an early stage of the judicial exposition of Statutes of this description, Lord Eldon decided that they must be treated as contracts between the Companies and the Legislature. And this is no doubt the true principle by which they should be construed and applied. Liability to make compensation, therefore, is the contract of the Companies with the Legislature; and the right of the parties interested, that is, the parties sustaining loss, results from that contract and the enactments which give effect to it. If this view be correct, it is a mistake to lay down that the injury intended by the words 'injuriously affected' must be one in respect of which, if there had been no Statute enabling the Company to do the act, an action would have lain for the injury at common law. Right to compensation is a title introduced by and dependent on the Statutes; and it is only necessary to prove special damage to the occupant of the property occasioned by the construction of the railway or its incidental works, and that the complainant is a party interested within the meaning of that phrase in the Statute. I use the words 'special damage' in individual particular loss, because I entirely concur with the doctrine that compensation cannot be claimed by an individual for a damage which is sustained in common by all the subjects of the realm. Thus, if a public highway be diverted or crossed on a level by a railway, the inconvenience of having to wait while traffic passes is common to all the public; and the benefit which is considered results to the public from the railway is the only compensation. Persons residing in the neighbourhood may sustain this inconvenience more frequently than the rest of the public, but if the inconvenience is to be regarded as compensated by the public convenience, it cannot be converted into a ground for compensation by reason of certain persons having to sustain the inconvenience more frequently than the rest of their fellow-subjects.

"I agree also with the distinction that has been taken between damage resulting from the railway when completed, or from the act of making it and damage occasioned by the proper use

negligent) user of the railway when made. No claim can be made for loss resulting from the due user of a railway. Many persons, such as the proprietors of stage-coaches, stage-waggons and the owners of posting-inns, may be ruined by the user of the railway by the public, but they have no claim to compensation. Compensation is given by the Statute only to individuals who, in respect of the ownership or occupancy of lands or tenements, sustain loss in or through the construction of the railway or the erection of the incidental works . . . . . It seems difficult to deny, that the occupier of a public-house, the value of which depends on its custom, has his interest in that house materially damaged by loss of custom. It may always have been used as a public-house, and as such has been let to the occupier who takes it and pays a high rent for it as a public-house. When he took it, its value was ascertained and the rent fixed by reference to the custom it had; and it seems in the highest degree unreasonable to strip the house of its character, and of the use and purpose for which it has been constructed, fitted and employed; and having done so, to say that the interest of the occupier has sustained no damage, because the building or structure has not been deteriorated. A man gives a rent of £100 per annum for a public-house with good custom, long established in some much-frequented thoroughfare, which house, if not used as a public-house, would not be worth £50 per annum. Suppose, then, that the thoroughfare should be wholly or partially obstructed, and the custom of the house thereby diminished by one-half, is it consistent with common sense to say that the interest of the tenant in the house is not materially prejudiced? It is a fallacy, almost a mockery, to answer, 'the custom is one thing, and the house another; and the injury is to the custom, not to the house.' You cannot sever the custom from the house itself, or from the interest of the occupier; for the custom is the thing appertaining to the house which gives it its special character and constitutes its value to the occupier, and for which he pays in the high rent he has agreed to give. If you diminish the custom of a public-house, you diminish its value either to let or sell, and therefore you deteriorate the public-house and the interest of the tenant therein.

"The true principle and the only rule is that in the enquiry whether the interest of the occupier of a messuage or building is damaged, that is, injuriously affected, you should estimate the

by trains passing along a railway constructed under the authority of an Act of Parliament when no part of his land has been taken, yet compensation may be given for deterioration in the value of his property occasioned in a similar manner where a part of his land has been taken.

In the same case it was also held that in this question of compensation may be considered a person's particular and individual use of that in which he has no particular right, such as the shore of a tidal river. The plaintiff was the owner of a house and garden on the bank of the Thames; he had had the use of a causeway which ran from his garden to low-water mark in the river, and which was always repaired and kept in order by him; he was deprived of the use of this causeway and of his communication with the river by the embankment of the river and the formation of a road between it and the garden. Mr. Justice HANNEN said:—"Plaintiff as owner of land abutting on a navigable river, was entitled to a right of access to the stream along his whole frontage, and not merely at the spot where his jetty projected. If in the course of time it should have been advantageous to the plaintiff to use the whole of the land abutting on the Thames as a wharf or for any other purpose, he would have been entitled to do so, and anything which would permanently deprive him of that right of property would be the subject of an action if it were not authorized by Act of Parliament." Baron MARTIN said:—"Although he had not the soil of the bed of the river, he had the easement or right or privilege (by whatever name it may be called) of the flow of the river Thames in its natural channel up to his garden wall. . . . And if any one had done an act injurious to the right to the flow of the water, he would have had a legal right of action against him." And Lord CAIRNS said:—"The property in this case was what is commonly called riparian property. The meaning of that is that it had a water frontage. The meaning of its having a water frontage was this, that it had a right to the undisturbed flow of the river which passed along the whole frontage of the property in the form in which it had been accustomed to pass. That being the state of things, this water frontage with these rights was taken for the purposes of the Act. Beyond all doubt the water-right was a property belonging to the plaintiff for which compensation was to be made."

So also Lord PENZANCE in *The Metropolitan Board of Works* v. *McCarthy*:—"The immediate contiguity to a highway, commonly called frontage, is a well-known and powerful element in the value of all lands in populous districts. When frontage to a high road does not exist, propinquity and easy access to a high road are equally undoubted elements of value in such districts, distinguishing lands which have them from those which have them not. If then the lands of any owner have a special value by reason of their proximity to any particular highway, surely that owner will suffer special damage in respect of these lands beyond that suffered by the general public if the benefits of that proximity are withdrawn by the highway being obstructed. And if so, the owner of such lands appears to me to fall within the rule under which an action is maintainable, though the right interfered with is a public one."

And in *Lyon* v. *Fishmongers' Company* (L. R., 1 App. Cas. 662) Lord CAIRNS said:—"Unquestionably the owner of a wharf on the river bank has, like every other subject of the realm, the right of navigating the river as one of the public. This, however, is not a right coming to him *qua* owner or occupier of any lands on the bank, nor is it a right which *per se* he enjoys in a manner different from any other member of the public. But when this right of navigation is connected with exclusive access to and from a particular wharf, it assumes a very different character. It ceases to be a right held in common with the rest of the public, for other members of the public have no access to or from the river at the particular place; and it becomes a form of enjoyment of the land, and of the river in connection with the land, the disturbance of which may be vindicated in damages by an action or restrained by an injunction. It is, as was decided in the cases to which I have referred (*Duke of Buccleuch* v. *The Metropolitan Board of Works; The Metropolitan Board of Works* v. *McCarthy*), a portion of the valuable enjoyment of the land, and any work which takes it away is held to be an 'injurious affecting' of the land,—that is to say, the occasioning to the land of an 'injuria' or an infringement of right. The taking away of river frontage of a wharf, or the raising of an impediment along the frontage, interrupting the access between the wharf and the river, may be an injury to the public right of navigation; but it is not the less an injury to the owner of the wharf which, in the absence of any Parliamentary authority, would be compensated by damages or

altogether prevented. It appears to me impossible to say that a work of enjoyment of land on the bank of a navigable river which is thus valuable and as to which a landowner can thus protect himself against disturbance is otherwise than a right or claim to which the owner of land on the bank of the river is by law entitled within the meaning of such a saving clause as that which I have read."

From the foregoing cases it would appear that under the English Statutes the following four principles have been established:—

(1.) The damage must be such as, if caused by a private person, might have formed the subject of an action.

(2.) It must be a damage affecting the land of the claimant, independent of any particular trade which may have been carried on upon it.

(3.) It must be a special damage, peculiarly affecting the claimant as distinguished from the rest of the world.

(4.) It must be a damage caused by and during the construction of the works, and not by their subsequent use.

These propositions may now be said to be settled law in England, though the first, second and fourth were not established without opposition. The second rule in particular was thought to be a hard one, and the Indian Legislature appears to have intended to lay down a more liberal principle. "Regarding compensation for the loss of earnings," said Mr. Strachey, "the Bill dealt decidedly more liberally with private interests than the English law; for mere obstruction or inconvenience to trade was not now regarded by the English law as supporting a claim for compensation." It must be borne in mind, however, that the wording of the English Statutes is very different from the Indian Act; and although the principles laid down in England, when independent of the wording of the Statutes, may usefully be followed in this country, still when, on the other hand, they depend on the particular wording of the English Statute, care must be taken in applying them to cases under the Indian Act. For instance, by the English Statute *any one whose land is injuriously affected* by the acquisition can claim compensation; by the Indian Act, in order to be entitled to compensation, a person must have or claim to have an *interest in the land which is acquired*. It is true that the definition of land is very wide and includes any benefit arising therefrom, such as an easement or a right of frontage. But still it is submitted that in

order to recover consequential damages, say on account of loss of earnings, the injury complained of must be shown to be closely connected with the acquisition of the land actually taken, and special damage or individual particular loss arising out of that connection must be proved. It is doubtful, indeed, whether even under the Indian Act compensation could have been recovered in *Richet's* case. In that case compensation was refused, *first*, because the evidence did not disclose any damage which if caused by a private person would have been actionable, and *secondly*, because it was not shown that any permanent damage had been caused to the plaintiff's premises. By the Indian Act this would not be a necessary condition, but it would have been necessary to show that there had been an infringement of some special benefit arising out of the land actually acquired ; while on the first ground the claim would have been barred by s. 25, cl. 3.

It will be observed that by the Indian Act compensation may be granted not only for injury to *land*, but also for injury to *moveable property* (see *Knock's case, ante*) as well as to earnings. Both in England and in India it has been held that all damage which can be foreseen and is capable of being estimated at the time of awarding compensation, should be claimed and assessed once for all—*Croft* v. *London and North-Western Railway Company*, 32 L. J., Q. B. 113. In a subsequent suit for compensation, whether the damage could reasonably have been foreseen at the time of the acquisition, is a question of fact to be determined by the Court—*Tapidas Govindbhai* v. *The B. B. and C. I. Railway Company*, 6 Bom. Rep., A. C. J. 116.

(4.) *Expenses of removal.*

Residence would probably be held to include a place of business.

Matters to be neglected in determining compensation.

25. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition:

Secondly, any disinclination of the person interested to part with the land acquired:

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit:

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put;

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

Sixthly, any increase to the value of the other land of the person interested, likely to accrue from the use to which the land acquired will be put; or

Seventhly, any outlay or improvements on such land made, commenced or effected, with the intention of enhancing the compensation to be awarded therefor under this Act.

(1.) *The urgency of the acquisition.*

By s. 23, cl. 1, the market-value of the property is to be awarded,—that is, the price which an ordinary purchaser might be expected to pay for it. The Court is not to take into consideration any special value it may possess for the Government or for the purposes of the acquisition, nor, on the other hand, any special value it may possess for the owner (cl. 2).

(2.) *The disinclination of the owner to sell.*

This clause forbids the award of a 'fancy' price. The compulsory nature of the transaction is compensated by the additional allowance under s. 42. Further, a personal feeling or an unwillingness to sell is too vague and imprecisable an element in the transaction to be correctly valued in money. No compensation can be given for destroying a picturesque effect, or for interfering with a sentimental association, such as that attached to a ruin. Nor for annoyance to the amenities of a claimant's property—*Penny v. South-Eastern Railway Company*, 26 L. J., Q. B. 225; nor for mere personal inconvenience—*Caledonian Railway Company v. Ogilvy*, 2 Macq. 229. See also *Stebbing v. Metropolitan Board of Works*, L. R., 6 Q. B. 37.

(3.) *Damage which, if caused by a private person, would not be actionable.*

That is, the injury for which compensation is claimed must be an infringement of some right—not a mere *damnum absque injuriâ*; *Ex damno sine injuria non oritur actio*. This is one of the princi-

ples which the English Courts have adopted in awarding compensation. See the cases cited under s. 24, cl. (8), and in particular *Ricket v. Metropolitan Railway Company*; *Metropolitan Railway Company v. McCarthy*; and *Duke of Buccleuch v. Metropolitan Board of Works*. See also *The New River Company v. Johnson* (26 L. J., M. C. 93), in which it was held that the plaintiff was not entitled to compensation because the Company, in the exercise of its statutory powers, constructed some underground works on their own land which drew off the water from plaintiff's well. So, where the tenant of a public-house claimed compensation for the loss of profits he had sustained by reason of a Railway Company having pulled down the adjoining houses, it was held that he was not entitled to compensation; for if any private person had purchased and pulled down the adjoining property, no action would have lain against him.—*Reg. v. Vaughan*, L. R., 4 Q. B. 190; 38 L. J., M. C. 49. So, where by the obstruction of a public thoroughfare, injury was occasioned to the plaintiff's business.—*Herring v. Metropolitan Board of Works*, 34 L. J., M. C. 224. See also Lord Campbell's remarks in *Penny v. South-Eastern Railway Company*, 26 L. J., Q. B. 225; and *Rhodes v. Airedale Drainage Commissioners*, L. R., 1 C. P. C. 380, 402.

"The object of this provision is to exclude vexatious claims which might be made on account of trifling inconveniences caused during the progress of the works."—*Speech of Mr. Strachey.*

As regards the infringement of rights naturally incident to the possession and ownership of land, see Addison on Torts, chap. 2.

(4.) *Prospective damage likely to be caused by, or in consequence of, the use to which the land acquired will be put.*

This clause is not very clearly worded, but there can be no great doubt as to its meaning. By s. 6 the purpose for which the land is needed must be published in the declaration, and the object of such publication is not only to bear out the declaration that the land is needed for a public purpose, but also to apprise the persons interested of the nature of that purpose in order that they may consider how the proposed acquisition will affect their other property or their earnings, and prefer their claims accordingly. The work for which the land is acquired may deprive a person interested of an easement or of a water frontage (as in the *Duke of Buccleuch's* case), and it can never have been intended that such damage should not be taken into account. Any damage can

and must be taken into account which can be clearly foreseen as arising out of the purpose for which the land is declared to be needed and acquired.—*Tapidas Govindbhai* v. *The B. B. & C. I. Railway Co.*, 6 Bom. Rep., A. C. J. 116. The clause under consideration seems to have reference to prospective and future damages that cannot be foreseen. The leading case on the subject is that of *Lee* v. *Milner* (2 M. & W. 824), in which it was held, that "the jury have no right to assess prospective damages except after an *example* of damage has actually occurred. The cause of injury must exist in some work of the Company which is then already done, and that work must be in such a state as to be incapable of further alteration so as to obviate the damage." As Mr. Strachey said :—"Any person interested in the property might at any future time recover by suit compensation for any damage which could not be foreseen when the property was taken. All that was intended was that in fixing the value at the time of taking the property, the official valuers should not take into consideration purely speculative or imaginary damages."

In *Hammersmith and City Railway Company* v. *Brand* (L. R., 4 H. L., Eng. and Ir. App. 171) it was held that compensation could only be given under the Land Clauses Consolidation Act for damage done in the construction of the works, and not for damage done afterwards when the works are completed and in the exercise of the statutory powers. Accordingly, compensation was refused which had been claimed on the ground of the vibration caused by the passing of trains whereby the plaintiff's property was depreciated. So in regard to the noise and smoke caused by the passing of trains.—*City of Glasgow Railway Company* v. *Hunter*, L. R., 2 H. L. Sc. 78. But, although compensation may not be granted to a person annoyed by the smoke and vibration caused by trains passing along a railway constructed under an Act of Parliament when no part of his land has been taken, compensation may be given for deterioration in the value of his property occasioned in a similar manner when a part of his land has been taken for the construction of the work.—*Duke of Buccleuch* v. *Metropolitan Board of Works*, L. R., 5 H. L. 418.

(5.) *Increase to the value of the land acquired from the use to which it will be put.*

In *Stebbing* v. *Metropolitan Board of Works* (L. R., 6 Q. B. 37) it was held that a churchyard which had been closed and was

practically valueless could not be assessed at the value it would have for the purpose for which it was taken under the Act.

(6.) *Increase to the value of other land from the use to which the land acquired will be put.*

In *Eagle v. Charing Cross Railway Company* (L. R., 2 C. P. 638) it was held that the fact that notwithstanding the diminution of light, the saleable value of the plaintiff's interest in the premises had not been diminished (the value of the property in the neighbourhood generally having become greatly enhanced by reason of the Company's works), was no answer to the claim for compensation. So in *Senior v. Metropolitan Railway Company* (32 L. J., Exch. 225) it was held, that the Company had no right to set off an ultimate possible benefit accruing to the premises of the person interested or to the neighbourhood in consequence of the construction of the railroad, against the present pecuniary loss caused by the execution of the work.

The construction of railways, roads and canals naturally increases the value of all lands in the neighbourhood, and not merely the land of the person through whose estate they may pass; and there is no reason why such a person should be deprived of a benefit which other proprietors in the neighbourhood will enjoy. Moreover, there are practical difficulties in estimating with any approach to certainty the extent to which the value of a property will be increased by the execution of a projected work.

(7.) *Improvements effected with the intention of enhancing the compensation.*

So, in England, where the owner of property, after a notice to treat had been served on him, entered into an agreement with a person who had for several years occupied part of the property as a weekly tenant, for a lease of the same to him for a term of three years, it was held that the tenant was not entitled to compensation in respect of the interest created by such agreement.—*In re Marylebone (Stingo Lane) Improvement Act. Ex parte Edwards*, L. R., 12 Eq. 389.

Rules as to amount of compensation.

26. Where the person interested has made a claim to compensation, pursuant to any notice mentioned in section nine or in section nineteen, the amount awarded to him shall not

exceed the amount so claimed, or be less than the amount tendered by the Collector under section eleven.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him shall not be less than, and may exceed, the amount so tendered.

The provisions of this and the two preceding sections shall be read to every assessor, in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded under this Act.

The rules laid down in this section limit the amount of compensation in three cases, *viz* :—

(*a*) *Where the person interested has made a claim*—in which case the amount awarded shall not exceed the claim, or be less than the amount tendered. This is the ordinary rule of the Civil Courts.

(*b*) *Where the person interested has refused to make a claim, or omitted to do so without sufficient reason.* In this case the amount awarded may be less than, and shall in no case exceed, the amount tendered.

(*c*) *Where the Judge thinks there was sufficient cause for such omission*—in which case the amount awarded shall not be less than, and may exceed, the amount tendered.

Record of assessor's opinion.

27. The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

There is no objection to the Judge and Assessors consulting together before the latter deliver their opinions, and in practice such consultation is desirable.

28. In case of a difference of opinion between the Judge and the assessors or any of them upon a question of law or practice or usage having the force of law, the opinion of the Judge shall prevail, and there shall be no appeal therefrom.

Difference on questions of law.

The point as to whether the damage would be actionable if caused by a private person (s. 25, cl. 3) would be a question of law, on which the opinion of the Judge would prevail; and so generally, as to the *right* to compensation. See note to s. 21.

29. In case the Judge and one or both of the assessors agree as to the amount of compensation, their decision thereon shall be final.

Agreement as to amount of compensation.

"Looking at s. 24, the 'amount of compensation' must be taken to mean, not the different matters that are to be taken into consideration separately, but the whole compensation." Accordingly, where the Judge differed wholly from one assessor and differed from the other assessor in the amounts awarded for the different items, but stated that he would not express a dissentient opinion, and agreed with him in the total amount awarded, it was held that there was not such a difference of opinion between the Judge and assessors as entitled the parties to appeal under s. 35.—*Ananda Krishna Bose* v. *Verner*, 13 B. L. R. 300; 22 W. R. 350. The High Court, nevertheless, has the power of superintendence over the Courts established by this Act under s. 15 of 24 & 25 Vict., cap. 104. And, therefore, where the Collector tendered compensation in respect of land some of which was above and some below high-water mark in a tidal navigable river and made an offer for each separately, it was held that the Judge and assessors had no power to award the whole sum tendered by the Collector as compensation for the land above high-water mark, but they should have determined what was a proper compensation for each description of land.—*In the matter of the Petition of Abdool Ali*, 15 B. L. R. 197; 23 W. R. 73.

30. In case of difference of opinion between the Judge and both of the assessors as to the amount of compensation, the decision

Difference as to amount of compensation.

of the Judge shall prevail, subject to the appeal allowed under section thirty-five.

It is immaterial whether or not the assessors agree with one another.—*Heysham* v. *Bholanath Mullick*; *Bholanath Mullick* v. *Heysham*, 11 B. L. R. 230.

Assessors' fees.

31. Every assessor appointed under this Act, not being an officer of Government, shall receive such fee for his services as the Judge shall direct, provided that such fee shall not exceed five hundred rupees.

Such fee shall be deemed to be costs in the proceeding.

Costs of proceedings taken by district court.

32. The costs of all proceedings taken under this Part by order of the Court shall, in the first instance, be paid by the Collector.

But not costs under Part IV. See Board's Rule 41.

Party to pay costs.

33. Where the amount awarded does not exceed the sum tendered by the Collector, the costs of all proceedings under this Part shall be paid by the person interested.

Where the amount awarded exceeds the sum so tendered, such costs shall be paid by the Collector.

The rule here laid down is of course subject to special arrangement, as where the Court grants a postponement on an understanding by either party to pay the costs thereof. The rule does not apply to costs incurred in trying questions of apportionment as between the persons interested under Part IV of the Act; and it is open to question whether it applies to costs incurred under s. 15, cl. 5, in trying questions of title or right.

By the person interested. By the next section the Court is empowered to decide by what particular person or persons and in what proportions the costs are to be paid.

Awards to be in writing.

34. Every award made under this Part shall be in writing signed by the Judge and the assessors or assessor concurring there-

in, and shall specify the amount awarded under the first clause of section twenty-four, and also the amounts (if any) respectively awarded under the second, third and fourth clauses of the same section, together with the grounds of awarding each of the said amounts.

Award to state amount of costs.

It shall also state the amount of costs incurred in the proceedings under this Part and by what persons and in what proportions they are to be paid.

Recovery of costs.

The costs (if any) payable by the person interested and not deducted under section forty-two may be recovered as if they were costs incurred in a suit, and as if the award were the decree therein.

If the Judge differs from both the assessors, the award need not apparently be signed by either of them. The award should specify the amount awarded under each clause of s. 24 separately, together with the grounds on which each of such amounts was awarded. It will operate as the decree in the case, and should contain all that is necessary to be entered in a decree.

There being no stamp-duty on the claim (Court Fees Act, VII of 1870, s. 19, cl. xxii), the costs principally consist of the pleaders' fees, witnesses' expenses, and the fees (if any) of the assessors. If the claimant wins, his pleader's fee should be calculated on the amount awarded; where the amount awarded does not exceed the sum tendered, the Government pleader's fee should be calculated on the claim (if any) made.

There is no appeal against the order in the award as to costs. "The Judge is to determine the amount of costs incurred by either party in the same way as it is done in suits by the Taxing Officer." —*Per* COUCH, C. J., *Bamasoonderee Dossee* v. *Verner*, 13 B. L. R. 189; 22 W. R. 136.

The last clause refers to a case in which the costs may exceed the amount awarded, or may be adjudged to be payable by a person to whom no part of the compensation has been awarded.

The award is not chargeable with stamp-duty, and any party claiming under it is entitled to a copy free of charge (s. 57).

Appeal from Judge's decision as to compensation.

35. If the Judge differs from both the assessors as to the amount of compensation, he shall pronounce his decision, and the Collector or the person interested (as the case may be) may appeal therefrom to the Court of the District Judge, unless the Judge whose decision is appealed from is the District Judge, or unless the amount which the Judge proposes to award exceeds five thousand rupees, in either of which cases the appeal shall lie to the High Court.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure for regular appeals in suits.

This section refers to cases in which the Judge differs from both assessors as to the amount of compensation under s. 30.

In Calcutta there is an appeal from the decision of a special Judge appointed under s. 3, to the High Court as the ordinary appellate Court of the district, even though the amount of compensation may not exceed Rs. 5,000.—*Bamasundaree Dossee* v. *Verner*, 13 B. L. R. 189; 22 W. R. 186. But *contra*, see *Avoomachella Gramany* v. *Vellappa Gramany*, 8 Mad. Rep. 103. As to the right of appeal on questions of law or title, see the remarks of Mr. (now Justice) FIELD in *Raja Nilmony Singh* v. *Ram Hardhu Roy*, 3 C. L. R. 211:—"It then follows that the Judge, in order to decide the proportions in which the persons interested are entitled to share in the amount of compensation, has jurisdiction to decide any question respecting the title to the land, or any rights thereto, or interests therein, which may arise between or among two or more persons making conflicting claims in respect thereof (cl. 5, s. 12); that in deciding this question he is to be guided by the usual procedure of the Civil Courts; and that the person or persons to whom his decision may be adverse have the same right of appeal to the superior tribunals which is enjoyed by the parties to ordinary civil suits."

The time within which appeals must be presented is regulated by the Indian Limitation Act, XV of 1877, Part IV. An appeal to a District Judge must be presented within thirty days from the

date of the award (Sched. II, art. 152), and an appeal to the High Court within ninety days (art. 156). In Calcutta, where the amount awarded does not exceed Rs. 5,000, the appeal should probably be presented within twenty days from the date of the award under art. 151. See *Ramsoonderee Dossee* v. *Turner*, cited above.

Provisions of Code of Civil Procedure made applicable.

36. The following provisions of the Code of Civil Procedure

(*a*) as to adding parties,

(*b*) as to adjournment,

(*c*) as to death, marriage, and bankruptcy or insolvency of parties,

(*d*) as to summoning witnesses and their attendance,

(*e*) as to examination of parties and witnesses,

(*f*) as to production of documents, and

(*g*) as to commissions to examine absent witnesses and to make local enquiries,

shall apply, so far as may be, to proceedings before the Court.

(*a*) *As to adding parties*, see s. 32, C. C. P. Parties added on or before the first hearing should be allowed an opportunity to file a claim (s. 261) and appoint an assessor.

(*b*) *As to adjournment*, see ss. 156—158, C. C. P.

(*c*) *As to death, marriage, &c.*, see ss. 361—372, C. C. P.

(*d*) *As to summoning witnesses, &c.*, see ss. 159—178, C. C. P.

(*e*) *As to examination of parties*, see ss. 117—120 (*and of witnesses*, ss. 181—192, C. C. P.

(*f*) *As to production of documents*, see ss. 138—143, C. C. P.; but probably the whole of Chap. X would be held to be applicable.

(*g*) *As to commissions to examine witnesses*, see ss. 383—391; *and for local investigations*, ss. 392—393, C. C. P.

A proceeding under this Part should, as far as possible, be treated as a suit in which the various claimants are plaintiffs and the Collector the defendant.

PART IV.

APPORTIONMENT OF COMPENSATION.

Particulars of apportionment to be specified.

37. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

The award spoken of in this section may be either that made by the Collector under s. 14, or that made by the Court under s. 34.

"*As between such persons.*" But it will not of course bind persons who are not before the Collector or the Court making the award.

Dispute as to apportionment.

38. When the amount of compensation has been settled under section fourteen, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

The Collector has no power to decide disputes as to apportionment.

The costs in a reference under this section should be borne by the persons interested. See Board's Rule 41.

Determination of proportions.

39. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under section thirty-eight, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from such decision to the High Court, unless the Judge whose decision is appealed from is not the

District Judge, in which case the appeal shall lie in the first instance to the District Judge.

Every appeal under this section shall be presented within the time and in manner provided for regular appeals in suits.

The amount of compensation having been settled either by the Collector under Part II, or by the Judge and assessors under Part III of the Act, this section prescribes that the Judge sitting alone shall decide any dispute that may arise as to the apportionment of the money. Such disputes often involve questions of right and title; by this section, therefore, all such questions referred to the Court under s. 15, cl. (5), are to be tried by the Judge in the proceedings under this Act, and not left, as formerly, to be decided in a separate suit. This change in the law was not at first recognized by the Courts, as appears from the remarks made in *Dwarka Singh* v. *K. Solano*, 22 W. R. 28; *Gour Ram Chunder* v. *Sonatun Das*, 25 W. R. 320; *In the matter of the Petition of Abdool Ali*, 15 B. L. R. 197; 23 W. R. 73. But the question has now been set at rest by the decisions in the cases of *Raja Nilmoni Singh Deo* v. *Rambandhu Roy*, I. L. R., 4 Cal. 757; *Ibid.* 388; and *Nobodeep Chunder Chowdhry* v. *Brojendra Lall Roy & others*, I. L. R., 7 Cal. 406. In the latter case PEARIER J. said:—"We think it right to say that under s. 39 it is the duty of the Judge, in apportioning the compensation money which he is directed to apportion, to decide the question of title between all persons claiming a share of the money." And the decision of the question in these proceedings, though open to appeal, cannot be contested by any of the parties to it in a regular suit.—*Raja Nilmoni Singh* v. *Rambandhu Roy*, ante.

The following decisions lay down the principles on which the apportionment of the compensation-money should be made between the zemindar and the various subordinate tenure-holders. The leading case on the subject is that of *Srinath Mookerjee and others* v. *Maharajah Mahtap Chand Bahadoor* (S. D. A. Rep., 1856, 126), in which the late Sudder Dewanny Adawlut said:—"The zemindar and the putneedar are entitled to compensation in proportion to the losses they respectively sustain from the appropriation of their lands and to the remission of the rents which they pay respectively to the Government or the zemindar.

. . . . The proper principle we consider to be as follows :— In respect to remission, as the gross rental of the whole putnee is to the gross rent of the land proposed to be taken, so will the entire putnee rent be to the particular portion of the rent to be remitted; and with regard to compensation the principle may most conveniently be stated as follows,—as the gross profit of the putnee is to the profit of the putneedar, so will the gross compensation be to the portion of the compensation the putneedar is entitled to recover. These formulæ are of universal application, and will enable any one hereafter to adjust the remission and compensation between zemindar and putneedar without difficulty in any case that may arise." So in *Gordon, Stuart & Co.* v. *Maharajah Mahtap Chand Bahadoor* (Marsh. 490) it was held that where lands are taken compulsorily, the principle upon which the amount of compensation is divisible amongst the zemindar and the holders of several subordinate tenures is to ascertain the value of the interest of each holder of a tenure and to give him a sum equivalent to the purchase-money of such interest. But the principle in the Sudder Dewanny Adawlut case is not applicable to the case of several putnees subordinate to one another, where the land is taken from the holder of the last tenure and where the grantors of the several intermediate tenures have received a sum of money as a bonus for the grant.—*Maharajah Mahtab Chand Bahadoor* v. *Bengal Coal Company & others*, 10 W. R. 391. In another case, where by the calculation of the plaintiff (a dur-putneedar) a more favourable result was secured to the zemindar than that for which he himself contended, it was held to be unnecessary to go into the proper principle on which the compensation should be apportioned.—*Bengal Coal Company* v. *Maharajah Mahtab Chand Bahadoor*, 12 W. R. 340. A putneedar is entitled to compensation though there may be no agreement to that effect.—*Joykissen Mookerjee* v. *Reazoonissa Beebee*, 4 W. R. 40. The party *primâ facie* entitled to the compensation is the proprietor; any party claiming against him by virtue of a right derived from him (*e. g.* mokurrareedar) is bound to prove the right he pleads.—*Issur Chunder Banerjee* v. *Sattyo Dyal Banerjee*, 12 W. R. 270.

In a suit between a putneedar and a zemindar for apportionment of compensation-money in deposit with the Collector under Act VI of 1857 COUCH C. J. said :— "The compensation ought to be

apportioned between the parties according to the value of the interest which each of them parts with. The zemindar has a right to the fixed rent, and the loss he sustains is of so much of his rent. Any other possible injury, such as the chance of the putneedar throwing up the land, and its being diminished in value by what has been taken by Government and still remaining, as it did, liable to pay the same revenue, is, we think, not appreciable and cannot be taken into account. If there is no abatement of the rent and the putneedar continues liable to pay to the zemindar the same rent as he had to pay before, there would be nothing for which the zemindar ought to receive compensation. He would be in the same position as before, except with reference, as we have said, to the possibility of a loss which is scarcely appreciable. But the proper mode of settling the rights of the parties is to give to the putneedar an abatement of his rent in proportion to the quantity of land which has been taken from him. It is not fair that he should be liable to pay the same rent when a part of the land has been taken away. The decision of the Judge that the plaintiff is entitled to an abatement of the rent is correct, and is in accordance with the principle laid down in the case of the Maharajah of Burdwan. This being so, the zemindar ought to be compensated for the loss of rent which he sustains, and the money ought to be divided between the parties accordingly. The putneedar's getting an abatement of his rent is to be taken into account as partly the way in which he is compensated for the loss of the land."—*Raye Kissory Dassee* v. *Nilcant Day*, 20 W. R. 370.

On the other hand, see the remarks of GARTH, C. J., in *Godadhar Dass* v. *Dhunpat Sing*, I. L. R., 7 Cal. 589:—"As regards the zemindar, it is a mistake to suppose that his interest in the land is confined entirely to the rent which he receives from the putneedar. He is the owner of it under the Government; and in the event of the putnee coming to an end by sale, forfeiture or otherwise, the property would revert to the zemindar, who might deal with it as he pleased in its improved state; and although in some cases the chances of the putnee coming to an end may be more or less remote, there is no doubt that in all cases the zemindar is entitled to some compensation (small though it be) for the loss of his rights. At any rate he would generally be entitled to receive as much as the putneedar."

A ryot with a right of occupancy is entitled to share in the compensation. See definition of 'person interested' and Board's Rule 24 A.

"The parties who usually suffer most from lands being taken for Government purposes are either the ryots with right of occupancy or the holders, whoever they may be, of the first permanent interest above the occupying ryots. The actual occupier is of course turned out by the Government, and if he is a ryot with a right of occupancy, he loses the benefit of that right, besides being driven possibly to find a holding and a home elsewhere; and the holder of the tenure immediately superior to the occupying ryots, whatever the nature of the holding may be, loses the rent of the land taken during the period of his holding. These two classes, therefore, would, generally speaking, be entitled to the larger portion of the compensation." *Per* GARTH C. J. in *Godadhar Dass* v. *Dhunpat Sing*, ante.

In *Bhagaeruth Moodee* v. *Rajah Jabar Jumman Khan* (18 W. R. 91) it was held that as under Reg. XXIX of 1814 the zemindar retains an interest in ghatwalli lands, he is entitled to share in the compensation, and in that case he was allowed a one-fourth share. But in a subsequent case it was held, that neither the zemindar nor the undertenants of the ghatwal could claim a share, but that the compensation-money carried with it all the incidents of the original ghatwalli tenure, and the ghatwal for the time being was entitled only to the interest accruing therefrom during his lifetime.—*Ram Chunder Singh* v. *Jabar Jumma Khan*, 14 B. L. R., App. 7. As to compensation in such cases of service lands, see Board's Rules 42-43.

Abatement of rent. In *Gordon, Stuart & Co.* v. *Maharajah Mahtab Chand Bahadoor & others* (Marsh. 490) it was held that abatement of rent could not be claimed in a suit to recover compensation under the former procedure, such a claim being cognizable only in a suit under Act X of 1859, s. 18. But such a claim may be made by way of set-off in a suit for arrears of rent—*Deen Dyall Lall* v. *Mussamut Thukroo Koonwar*, 6 W. R., Act X Rul. 24; even though the pottah may not provide for a remission of the khal, and the superior holder has not obtained a similar benefit from the zemindar—*Mahesh Chunder Dutt* v. *Gudadhonoy Dossee and others*, 2 Hay 495. But the abatement claimed must be reckoned with reference not to the gross amount of compensation,

but to the proportion which passes into the lands of the superior holder.—*Maharajah Dheraj Mahtab Chand Bahadoor* v. *Chittro Coomaree Bibee*, 16 W. R. 201.

Under the present law, the practice is to grant abatement of rent in the same proceedings in which the compensation is apportioned. Indeed, in many cases, a share of the compensation can only be allowed to the superior tenure-holders on the condition of an abatement of the rent. So in regard to the capitalized Government revenue (under Government Rule 6), which is often claimed as belonging to the zemindar. A little consideration will show that the capitalized value of the Government revenue is only a part of the total compensation and must be treated as such; and, when there are permanent undertenures, the zemindar is not entitled to that or any other part of the compensation, unless he agrees to make a corresponding reduction in the rent. The Judge "will do wisely to make the parties come to some arrangement as to the abatement."—*Godadhar Dass* v. *Dhunput Sing*, ante.

Appeal. By s. 7 of the Bengal Civil Courts Act VI of 1871, an Additional Judge exercises the same powers as a District Judge, and by s. 21 appeals from his decrees or orders lie to the High Court.

PART V.

PAYMENT.

Payment of compensation to whom made.

40. Payment of the compensation shall be made by the Collector according to the award to the persons named therein, or, in the case of an appeal under section thirty-nine, according to the decision on such appeal:

Proviso.

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

This section authorizes and directs the Collector to pay the compensation to the persons named in the award, or according to

the decision on appeal. That is to say, the persons so entitled have a right to be paid without further suit, and the Collector is protected in paying them. Similarly under Act VI of 1857 it was ruled that a Collector who after proper enquiry paid the compensation to the person "deemed by him to be in possession as owner" was not liable to be sued by the real owner for the amount—*Hossein Dalmolhur* v. *Secretary of State for India in Council*, 7 Beng. Rep., O. C. J. 13.

The proviso does not apply to any person who has appeared and been a party to the proceedings under this Act.—*Raja Nilmoni Singh Deo Bahadur* v. *Rook Bandhu Rai*, I. L. R., 7 Cal. 388. In that case their Lordships of the Privy Council said:—"Such a proviso, which appears to have been but a repetition of a provision in a previous Act *in pari materiâ*, is necessary in this, as in almost all Acts of a similar character. It is necessary for the Government, or the persons or Company entitled to take the property compulsorily, to deal with those who are in possession or ostensibly the owners; but it may happen, and frequently does happen, that the real owners, possibly being infants or persons under disability, do not appear, and are not dealt with in the first instance; and therefore a proviso of this sort is necessary for the purpose of enabling the parties who have a real title to obtain the compensation-money. . . . The proviso applies only to persons whose rights have not been adjudicated upon in pursuance of ss. 38 and 39, and it has not the effect, which it would certainly not be reasonable to attribute to it, of permitting a person whose claim has been adjudicated upon in the manner pointed out by the Act to have that claim reopened and again heard in another suit. Their Lordships are of opinion that the provisions in this Act for the settling of compensation are intended to be final; and that the amount and distribution of the compensation having been settled in this case by a competent Court, and the decision not having been appealed against, the settlement is final, and the present suit cannot be maintained." See also the judgment of the High Court in the same suit, I. L. R., 4 Cal. 757; 3 C. L. R. 210.

Payment on making award by Collector.

41. When the amount of the compensation has been settled under section fourteen, if the persons interested shall so decide, the

Collector shall on the making of the said award pay the amount of such compensation and take possession of the land:

Provided that, in any case where immediate possession is not required, he may allow the occupants (if any) of the land to remain in occupation of the same, upon such terms as he and they may agree on, until possession of the land is required.

This section refers to the time when payment may be made, and must be read with s. 42. The section authorizes the Collector to make payment if he has made an award (which under s. 14 is final as to the amount), *and* if the persons interested consent, that is, if there is no dispute as to right or title. But the Collector obviously cannot pay the compensation if he has made a reference to the Court under s. 15 or s. 38, even though he may have made an award. In such a case he is bound to await the result of any appeal that may be preferred against the Court's decision (s. 42). As Mr. Field remarked in *Raja Nilmani Singh v. Hem Chandra Roy* (3 C. L. R. 217), "the determination of the question of title before payment is made of the amount of compensation obviates the possible mischief of payment to the wrong party, and brings the matter to a speedy conclusion much more satisfactorily than the former plan of the Collector holding the money until the parties had taken their own time to litigate the question of title."

Payment of the compensation is not a condition precedent to taking possession. See s. 16. The proviso should rather have been annexed to that section.

As to the proper procedure when payment becomes due, see Government Rule XI and Board's Rules 40—40 *a*.

As to the period of limitation for suits for compensation, see Act XV of 1877, sched. II, arts. 17—18.

Percentage on market-value.

42. In addition to the amount of any compensation awarded under Part II or Part III of this Act, the Collector shall, in consideration of the compulsory nature of the acquisition, pay fifteen per centum on the market-value mentioned in section 24.

When the amount of such compensation is not paid on taking possession, the Collector shall pay the amount awarded and the said percentage with interest on such amount and percentage at the rate of six per centum per annum from the time of so taking possession:

Payment with interest.

Provided that the costs, if any, payable to the Collector by the person interested, shall be deducted from such amount and percentage.

Provided that, in cases where the decision of the Court under Part III or Part IV of this Act is liable to appeal, the Collector shall not pay the amount of compensation or the percentage, or any part thereof, until the time for appealing against such decision has expired, and no appeal shall have been presented against such decision, or until any such appeal shall have been disposed of.

Time of payment in appealable cases.

The additional allowance of 15 per cent. is only payable on the *market-value* of the land under cl. 1 of s. 24, and not on any damages that may be awarded under cls. 2, 3 or 4 of that section. See Government Rule VIII and Board's Rules 47—49.

The additional allowance should not form part of the award; it is to be paid over and above the amount awarded.

Interest should be paid up to the date on which the compensation is due. See Government Rule XI and Board's Rules 40--40A. The intention of the first proviso appears to be that the costs (if any) should be deducted before interest is calculated.

Formerly, the Collector had to invest the amount in Government securities pending suit or appeal, but this is not now necessary.

Certain rulings under the old law on the subject of payment may be briefly referred to in this place:—In a suit to recover compensation for certain lands taken for roads under Reg. I of 1824, when plaintiff had applied for compensation in the usual course, but after various delays had been refused compensation and referred to the Civil Court after the period of limitation had expired, it was decided that the cause of action arose when the

plaintiff was dispossessed from the land and not when compensation was refused, and that he was not entitled to any consideration for his delay in instituting a suit which was the best remedy prescribed by law, and that the mere fact of Government receiving revenue for the estate in which the lands were situated did not prevent the law of limitation from acting in its favour, as it would in the case of any private individual in adverse possession.—*James Mills v. The Magistrate of Nuddea*, 11 W. R. 1. In *Yesoba Dunodhar v. Secretary of State in Council* (7 Bom. Rep. O. C. J. 12) it was held that it was discretionary with the Collector to take advantage of the provisions of s. 23, Act VI of 1857; if, when due enquiry he chose to pay to the person deemed by him to be in possession, he was not liable to be sued afterwards by the real owner. When the compensation was kept in deposit and invested under that section, the owner was not entitled to interest in and what accrued on the Government securities.—*Syud Keramut Ali Mutwalee v. Royal Sultochuya Ghosal*, 7 W. R. 1864, 329. In a suit for apportionment of certain compensation money in deposit with the Collector, it was held that the cause of action did not arise until the plaintiff sought to obtain his share of the compensation, and was prevented from doing it by the act of the defendant, who would not join him or enable him to get it from the Collector.—*Raye Kissory Dassee v. Nilcant Dutt*, 20 W. R. 370.

PART VI.

TEMPORARY OCCUPATION OF LAND.

Temporary occupation of waste or arable land.

43. Subject to the provisions of Part VII of this Act, whenever it appears to the Local Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the Local Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

The Collector shall thereupon give notice in writing to the persons interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons respectively.

Difference as to compensation.

In case the Collector and the persons interested differ as to the sufficiency of the compensation, the Collector shall refer such difference for the final order of the Court.

Act II of 1861, s. 3 authorized the temporary occupation of any land not more than one hundred yards from the centre line of the road, canal or railway, as marked on the ground, "for taking earth or other materials for making or repairing the road, canal or railway, or for depositing thereon superfluous earth or other materials, or erecting temporary buildings and workshops thereon, and of any land which may be needed for making temporary roads or railways from any public road or any navigable river to the intended line of railway;" and "for the temporary occupation of such land and for any permanent damage done by such occupation and use of the land, including the full value of all clay, stone, gravel, sand, and other materials taken thence," compensation was to be paid to the persons interested therein.

And when the provisions of that section were "inadequate for the purpose of taking ballast or of brick-making or of quarrying for building-stone or limestone," and it was expedient that land should be temporarily occupied beyond such limits, the Government might extend the provisions of that section to any uncultivated land within two miles of the line of road, provided it was not being worked or used at the time for the same purpose.

Under the present Act no *local* limits are imposed, but only *waste or arable* land can be temporarily occupied, and that only *for a maximum period of three years.* It has also been ruled by the High Court in *Collector of Gya* v. *Denonath Roy* (not reported) that land actually used as a stone-quarry is not waste (30th March 1881).

The procedure to be followed on a reference under this section is to be the same as on a reference under s. 15 (Government Rule IX); but the reference will be decided by the Judge sitting alone (s. 45).

The procedure in determining the apportionment of the compensation will be that laid down in Part IV of the Act (Government Rule X).

See also Board's Rule 50.

Power to enter and take possession.

44. On payment of such compensation,

or on executing such agreement,

or on making a reference under section forty-three,

the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

Restoration of land taken.

And on the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Local Government shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

Even if payment is made at once in a gross sum, there must apparently, under s. 43, be an *agreement in writing*. The land must be restored on the expiration of the term agreed upon, unless it has become permanently unfit for the purpose for which it was formerly used, and the persons interested insist that the Government shall acquire it permanently.

The Collector must at the same time tender compensation for any further damage done, and if the tender is refused, or there is

any dispute as to the amount of damage, the Collector is bound to refer the matter to the Court under the next section.

By Act II of 1861, s. 5, the persons interested could, at any time before agreeing as to the compensation or before the order of reference, compel the Government to acquire the land permanently or forego its occupation; under the present Act, however, they cannot do this until the expiration of the temporary occupation, and not then unless the land has been rendered permanently unfit for its former use. In the event of any dispute on the point, the matter must be referred to the Court under s. 45.

Difference as to condition of land.

45. In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference for the final order of the Court, and on such reference, or on a reference under section forty-three, the Judge sitting alone shall decide the difference referred.

As to the condition of the land at the expiration of the term. These words will include both a difference as to the further compensation (if any) to be paid, and a difference as to the permanent unfitness of the land for its former use.

PART VII.

ACQUISITION OF LAND FOR COMPANIES.

Company may be authorized to enter and survey.

46. Subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, the Local Government may authorize any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section four.

Construction of sections four and five.

In every such case section four shall be construed as if, for the words "for such purpose," the words "for the purposes of the Com-

pany" were substituted, and section five shall be construed as if, after the words "the officer," the words "of the Company" were inserted.

Consent of Local Government to acquisition.

47. The provisions of section six to section forty-five (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the Local Government, and unless the Company shall have executed the agreement hereinafter mentioned.

Execution of agreement.

Previous enquiry.

48. Such consent shall not be given unless the Local Government be satisfied, by an enquiry held as hereinafter provided—

(1) that such acquisition is needed for the construction of some work, and

(2) that such work is likely to prove useful to the public.

Such enquiry shall be held by such officer and at such time and place as the Local Government shall appoint.

Such officer may summon and enforce the attendance of witnesses, and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the Code of Civil Procedure in the case of a Civil Court.

Agreement with Secretary of State in Council.

49. Such officer shall report to the Local Government the result of the enquiry, and if the Local Government is satisfied that the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall, subject to such rules as the Governor General of India in Council may from time to time prescribe in this behalf, require the Company to enter into an agreement with the Secretary of State for

India in Council, providing to the satisfaction of the Local Government for the following matters, namely:—

(1.) The payment to Government of the cost of the acquisition:

(2.) The transfer, on such payment, of the land to the Company:

(3.) The terms on which the land shall be held by the Company:

(4.) The time within which, and the conditions on which, the work shall be executed and maintained: and

(5.) The terms on which the public shall be entitled to use the work.

Publication of agreement.

40. Every such agreement shall, as soon as may be after its execution, be published in the *Gazette of India* and also in the local official Gazette, and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

This part of the Act takes the place of Act XXII of 1863, a "rather complicated measure" of fifty-three sections, "which had been hardly ever brought into practical effect." That Act "contained many conditions regarding the acquisition of land required for Railway construction by private persons or Companies other than the guaranteed Companies by which the existing Railways had been made. There had been no case," said Mr. Strachey when moving the Report of the Select Committee, "in which these particular provisions relating to Railways had been put in force, nor was there any present probability of their being required, because no such Railways were under construction, nor were any such, he believed, contemplated."

By this part of the Act land may be compulsorily acquired by Companies for works of public utility with the previous sanction of the Local Government, subject to such rules as the Governor-General of India in Council may from time to time lay down; but such sanction is not to be given unless after enquiry the Local Government is satisfied that the acquisition is necessary for the

construction of a work of public utility and the Company execute an agreement specifying, amongst other matters (enumerated in s. 49), the terms on which the public shall be entitled to use the work.

It does not appear that any rules have as yet been prescribed by the Governor-General in Council under either s. 46 or s. 49.

See Board's Rule 51.

PART VIII.

MISCELLANEOUS.

Service of notice.

51. Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section four, by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

Obstruction to survey, &c. Filling trenches. Destroying land-marks.

52. Whoever wilfully obstructs any person in doing any of the acts authorized by section four or section eight, or wilfully fills up, destroys, damages or displaces any trench or mark made under section four shall, on conviction before a Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

53. If the Collector is opposed or impeded in taking possession under this Act of any land he shall, if a Magistrate, enforce the surrender of the land to himself, and if not a Magistrate he shall apply to a Magistrate or (within the Towns of Calcutta, Madras, and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

Magistrate to enforce surrender.

54. Except in the case provided for in section forty-four, nothing in this Act shall be taken to compel the Government to complete the acquisition of any land unless an award shall have been made or a reference directed under the provisions hereinbefore contained.

Government not bound to complete acquisition.

But whenever the Government declines to complete any such acquisition, the Collector shall determine the amount of compensation due for the damage (if any) done to such land under section four or section eight and not already paid for under section five, and shall pay such amount to the person injured.

Compensation when acquisition is not completed.

This section was new, its object being to prevent the introduction into this country of the English rule that a notice to treat is held to be a statutable agreement, upon which, if not duly carried out, an action for damages and a mandamus may be sustained.—*Morgan* v. *Metropolitan Railway Company*, L. R., 3 C. P. 553; 4 *Ibid*, 97. But it is compulsory on Government to complete the acquisition if a reference has been directed or an award made.

As to damages, see Board's Rule 52. The Collector's decision is final.

55. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or

Part of house or building not to be taken.

other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired.

Under Act VI of 1857, s. 32, it was held that a well in a mill compound from which the mill's engine was supplied with water was part of the manufactory within the meaning of the Act.—*Khurshedji Nusserwanjee v. The Secretary of State in Council for India*, 3 Bom. Rep., O. C. 98. In the same case, however, it was held that the owners of the mill by appointing an arbitrator before they made any claim under the section in question, had waived any irregularity in the previous proceedings and precluded themselves from claiming to have the whole manufactory taken. Similarly, under Act II of 1861, s. 5, a requisition to acquire permanently land needed for temporary occupation only had to be made before the compensation was agreed to, or before the matter was referred to arbitration.

The following English decisions in this matter may be useful:—

"The word 'house' comprises not only the courtyard, but also the office-houses and garden, and all that is necessary to the enjoyment of the house, if within the same ambit or circuit, whether attached to the main building or not, and though purchased subsequently to the erection of the main building.—*The Governors of S. Thomas's Hospital v. Charing Cross Railway Co.*, 30 L. J., Ch. 395. When a railway intersected a garden and orchard attached to a mansion, the Company was held bound to take the entire property.—*King v. Wycombe Railway Co.*, 30 L. J., Ch. 462. Houses in course of construction are houses within the meaning of the section.—*Alexander v. West End and Crystal Palace Railway Co.*, 31 L. J., Ch. 500. The test is, would the land required pass in a conveyance of the house as a part of the appurtenances.—*Fergusson v. London, Brighton and South Coast Railway Co.*, 2 N. R. 503, 506; *Smith v. Marlin*, 2 Wms. Saun. 500.

Where a manufactory was partly worked by water power supplied by a reservoir, which reservoir was supplied by a goit into which water was turned from a natural stream at some distance from the manufactory, and at the point where the goit commenced there was a weir with shuttles and a residence for a man to see to the shuttles, and a Railway Company proposed to take the weir, shuttles, residence and part of the goit, it was held that they were bound to take the whole of the manufactory.—*Fergusson v. Midland*

Railway Company, L. R., 6 Eq. Ca. 473. A vacant piece of land in front of a public-house which had always passed with the lease of the house and formed the only means of approach for vehicles, was held to be part of the house.—*Marson* v. *London Chatham and Dover Ry. Co.*, L. R, 6 Eq. Ca. 101. And if the ground can fairly be considered part of the house as a residence, it is immaterial that part of it may be used for business purposes, as *e. g.* a nursery garden.—*Salter* v. *Metropolitan District Railway*, L. R., 9 Eq. Ca. 432.

"The cases which have been decided upon this provision have already gone far enough. In my experience Companies have rather been the victims of the Statute than individuals. At the same time I am quite disposed to adhere to the rule which has been laid down, that it shall be construed liberally for the owner of property." *Per* the LORD CHANCELLOR, in *Reddin* v. *Metropolitan Board of Works*, 31 L. J., Ch. 660.

Payment of Collector's charges by Municipal Body or Company.

56. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Municipal Fund, or of any Company, the charges incurred by the Collector in such acquisition shall be defrayed from or by such Fund or Company.

Exemption from stamp-duty and fees.

57. No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Any fee, *i.e.*, costs of any kind. Claims for compensation under the Act are also exempted from stamp-duty under Act VII of 1870, s. 19, cl. xxii.

Bar of suits to set aside awards under Act.

58. No suit shall be brought to set aside an award under this Act.

Limitation of suits for anything done in pursuance of Act.

And no suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a

month's previous notice in writing of the intent proceeding and of the cause thereof, nor after tender of sufficient amends.

Under Act VI of 1857, s. 31, an award of arbitrators could be set aside by a Civil Court only on the ground of corruption or misconduct of the arbitrators. By the present Act the award is an award of the Court.

"I think the term 'award' used (in this section) does not include the decision of the Court under s. 39. But . . it indicates the intention of the Legislature to make proceedings under this Act final, and to make the mode of dealing with the questions to be raised under the Act exhaustive and self-contained." *Per* JACKSON, J. *Nilmonee Singh Deo* v. *Rambundhoo Roy*, I. L. R., 4 Cal. 760.

It has been held in England, that the parties are confined to the specific remedy given by the Statute and have no choice of any other tribunal to settle the amends in any case under the Act.—*Boyfield* v. *Porter*, 13 East 208. So that persons seeking to avail themselves of the provisions of the Statute are bound to follow the particular remedy given and no other (*Mayor, &c. of Blackburn* v. *Parkinson*, 28 L. J., M. C. 7), unless the statutory remedy does not extend to and cover the whole right.—*Shepherd* v. *Hills*, 11 Exch. 67.

As to the period of limitation for suits for acts done in pursuance of the Statute, see Act XV of 1877, sched. ii, art. 2.

Power to make rules.

59. The Local Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

Publication of rules.

All such rules, alterations, and additions shall, when sanctioned by the Governor General in Council, be published in the local official Gazette, and shall thereupon have the force of law.

The rules made by the Government of Bengal will be found in the Appendix. They were published in the *Calcutta Gazette* of 7th July 1875, p. 818.

APPENDIX.

Rules promulgated by the Government of Bengal under section 59 of the Act.

(Vide Calcutta Gazette of 7th July 1875, page 818.)

WHEREAS the basis of compensation to be awarded for revenue-paying lands taken up under the provisions of Act X of 1870 is intended by the said Act to be the actual price for which the land, subject to all its burdens, and among others to the burden of the payment of land-revenue, would sell in the market, it is necessary that the exact amount of the revenue demand should be ascertained and recorded before the award of compensation can be determined; and whereas, under the provisions of the existing law, the Revenue authorities, and none other, can regulate the amount of the revenue charge to be enforced against an estate, or a portion of an estate; and whereas some of the rules already promulgated under section 59 of the said Act proceed on assumptions which are at variance with the principle above enunciated, the following revised rules are issued by the Government of Bengal, with the sanction of the Governor-General in Council, in supersession of those previously in force:—

I.—Whenever any revenue-paying land shall be acquired under the Act, the proprietor shall, except as provided in rule VI, be relieved of liability to pay revenue to the extent of the Government demand upon the said land; and such relief shall have effect from the date on which the Collector may take possession of the land on account of Government.

II.—In such cases the Collector shall, before making a tender, or a reference to a Court regarding compensation, ascertain in accordance with the following rule, and record, the amount of Government revenue which is to be taken as payable in respect of the acquired portion; and shall, in event of a reference being made to a Court, furnish the Court, at the time of making the reference, with particulars of the amount of the share so ascertained and recorded.

III.—If the land to be acquired be an entire estate or tenure

assessed with a specific amount of revenue, the whole of such amount shall be remitted.

IV.—If the land be not liable for a specific amount of revenue, but be a portion of an estate or tenure which is liable for a specific amount, the proportion of Government revenue to be deemed payable in respect of the land taken shall be ascertained under the following rules :—

1*st.*—When an estate has, within twenty years next preceding the date of commencement of proceedings for acquisition of any land situate therein, been subjected to a detailed settlement, or has formed portion of an estate brought under division under Regulation XIX of 1814,* made after inquiry into and record of the assets of the estate, the Government revenue to be deemed payable in respect of the said land shall bear to the assets of the said land the same proportion as the Government revenue of the whole estate bears to the assets of the whole estate, as shown in the settlement or division proceedings.

2*nd.*—When there may have been no such settlement or division as aforesaid, then, if the area of the estate is known with accuracy, the amount of Government revenue to be deemed payable in respect of the portion of the land taken shall bear to the Government revenue of the whole estate the same proportion as the area of the said portion bears to the area of the whole estate.

3*rd.*—When the Government revenue deemed payable in respect of the land taken cannot be determined by either of the above rules, one-fourth of the net rent (*i.e.*, the gross rental less a deduction of 10 per cent. for the expenses of collection) of the said land shall be taken to be the amount of Government revenue thereon chargeable.

V.—In determining the amount of compensation to be tendered, the Collector shall take into consideration the fact that the land acquired is subject to the burden of the payment of Government revenue.

VI.—In the event of the proprietor declining to accept an abatement of revenue, such circumstance shall not entitle him to any compensation over and above the amount tendered on the original basis of calculation. In cases, however, in which the area of the portion of land acquired does not exceed more than one-twentieth part of the area of the estate, it shall be competent to the Revenue authorities, if the proprietor of the estate so desire, to entitle the proprietor the computed value of the revenue deemed payable in respect of such portion, on the condition of his continuing to pay the revenue of the entire estate without abatement : provided that, in computing the value of the revenue so

* In the territories under the Lieutenant-Governor of Bengal this Regulation has been superseded by Act VIII (B.C.) of 1876.

assigned, the basis of calculation shall not exceed the number of years' purchase (if known) upon which the market-value of the proprietor's profits, *i.e.* the tender of compensation, has been determined. Thus, if the market-value of the said profits has been computed at 12 years' purchase, the capitalized value of the revenue deemed payable in respect of the portion of land acquired shall be calculated at not more than 12 years' purchase of the amount of revenue in question.

VII.—When there is any doubt whether the land to be acquired is part of a revenue-paying estate or is revenue-free, the Collector shall, before making the reference to the Court which under the circumstances he would be required to make by section 15 of the Act, determine the amount of revenue which would be deemed payable in respect of the land acquired in the event of the land being adjudged by the Court to be a portion of the revenue-paying estate of which it is alleged to form a part.

VIII.—To enable the Collector to calculate accurately the additional compensation to be given under section 42 of the Act, and to enable him to keep up fully and clearly his registers of all lands occupied and compensation paid for them, the Collector shall invariably record separately his finding under the first head of section 24 of the Act, which concerns the market-value of the land, and also the specific portion of the compensation which he may award for any houses, trees or crops upon the land.

IX.—The procedure laid down for a reference under section 15 shall be held applicable to a reference under section 43.

X.—The procedure to be followed in the apportionment of the compensation awarded on account of lands taken up for tem[illegible]ry occupation shall be in accordance with the pr[illegible] of the Act.

XI.—On the date on which payment of [illegible] case may become due under section 41 of th[illegible] shall tender the amount to such of the persons [illegible] it as may be present at his office, in person [illegible] authorized to receive the same, informing them [illegible] that in the event of their refusal to accept the am[illegible] claim to interest will be entertained. Should an[illegible] absent and have no authorized agent at the Colle[illegible] Collector shall serve a notice upon him, calling [illegible] attend in person or by agent, within one week o[illegible] the notice, to receive the amount due to him, an[illegible] that on failure to appear within the period above [illegible] est whatever will be paid to him. Should such pe[illegible] appear within the time specified, the Collector s[illegible] satisfied of the due service of the notice, hold [illegible] deposit until it shall be applied for by the person [illegible]

Rules issued under the Authority of the Board of Revenue in the Lower Provinces of Bengal.

SECTION I.—GENERAL RULES.

1. By the definition in section 3 of the Act, the expression "Collector" means the Collector of a district, or a Deputy Commissioner, or "any officer specially appointed by the local Government to perform the functions of a Collector under this Act." The Collector cannot delegate to another any of his judicial functions, but he can make over any of his ministerial functions. For instance, he may depute a subordinate to map the ground or make a local inquiry, but he cannot delegate to another the duty of determining the amount of compensation. Whenever, therefore, it may be necessary to employ an Assistant or Deputy Collector to perform duties under the Act involving the exercise of judicial functions, the Collector of the district must apply through the Commissioner to the Board to have him vested by the Local Government with the necessary powers under section 3. It is usual to vest officers with the powers of a Collector under the Act either in a particular district or place, or for the purpose of taking up land for a particular object. It should be understood that the powers vested in an officer cease, in the one case, on his transfer or removal from the district or place concerned, and in the other as soon as the special purpose for which he was appointed has been accomplished.

2. No officer should be recommended for investment with powers under the Act, unless the Collector to whom such officer is subordinate is satisfied that he is well acquainted with the provisions of the law and the rules and instructions promulgated thereunder.

2 A. Though an indefensible title is secured by proceeding under the Land Acquisition Act X of 1870, and the procedure therein provided is in most cases calculated to save Government from the risk of paying more than the true market-value for land, cases may occur (especially in localities where the tenure of land is of a simple character) in which there is no risk with respect to title in securing land by private bargain, and in which the land may in this way be more speedily and cheaply secured than by proceeding under the Act. Local officers should bear this in mind when deciding what course to propose in any particular case.

3. Sections 4 and 5 lay down certain rules under which preliminary investigation may be made into the condition and

circumstances or lands which the Local Government may consider *likely to be* needed for any public purpose. These sections, however, seldom come into operation, and are only required in cases in which uncertainty may exist as to the position of the land to be taken up or its suitability for the purpose for which it is required, or when operations on a large scale are in contemplation and it is necessary to determine the line of a road, canal, or other important work. The form of notification is given in form A. Attention is called to the words italicised above; and it should be observed that whenever a notification has been issued under section 4, it must be followed by a declaration under section 6 as soon as it is decided to proceed with the acquisition and the position and boundaries of the land to be acquired have been fixed and determined.

4. The conduct of the preliminary investigation will be entrusted to such officer as the Government may generally or specially authorize for the purpose.

5. After publication of the notification under section 4 in the local Gazette, due notice of its substance will be publicly given by the Collector at convenient places in the locality, and the Collector must invariably apprise the officer entrusted with the preliminary investigation of the issue of the Gazette notification. No officer should commence preliminary investigation until he is certified of the issue of notice.

6. After receipt of intimation of the issue of the public notice from the Collector, the officer entrusted with the preliminary investigation will then proceed, as necessary, to examine the land, survey, dig, bore, and otherwise ascertain the suitability of the land for the purpose required, and will prepare such a preliminary map or plan of the land, and collect such further information, as will assist the Collector in forming an estimate of the probable cost of taking up the land. A memorandum accompanying the map should specify generally the character of the land, *e.g.*, whether waste, cultivated, or jheel, &c., and the number and character of buildings, trees, &c.

7. The map and memorandum will be made over to the Collector, who will prepare an estimate of the probable cost of the land, and of the houses and other properties on it. In making this estimate the Collector will consult his records, and use all the means at his command to obtain the nearest approximation to the probable outlay which can be obtained without a detailed valuation of the property. Detailed and final valuation can only be made after the declaration has been issued and the regular survey required by section 8 has been completed; but the Collector must bear in mind the explanation given in clause 23 below of the mode in which the value of the land (when revenue-paying) is to be arrived at.

8. The investigation to be made by the Collector in cases referred to him under section 5 is a summary one. The law gives him no power to take evidence on oath in conducting it. He may order a local inquiry, which he is at liberty to make either in person or by deputy, who, if the claim be for any sum exceeding Rs. 300, should be a Covenanted Officer or a Deputy Collector. The responsibility for the proceedings and for the award will, however, in all cases rest with the Collector.

9. If the land is required for Public Works purposes, the Collector will forward the preliminary map with his memorandum or estimate of cost, and also a draft of declaration in form B, for issue under section 6, to the Executive Engineer, for submission of the declaration to Government through the usual channel; but if the land is required for other Departments or for a Company, the Collector will (unless otherwise ordered) forward the documents to the chief local representative of the Department or Company for which it is required for submission to Government through the head of the Department, and for preparation of the Public Works estimate required by rule 14, section 1, chapter XIII, of the Public Works Code of Rules.

10. When no preliminary investigation has been made under sections 4 and 5, the Collector, if the land is required for the Revenue Department, will prepare the necessary preliminary estimate and draft declaration in form B for publication under section 6, and forward them through the Commissioner and the Board for the orders of Government. If the land be required for any other Department or for a Company, some duly authorized officer on behalf of the Department or Company must supply the Collector with the particulars, so far as known, of the land required. But in all cases the Collector will verify the information given by inquiry on the spot, and attach a certificate to his estimate of value, to the effect that "the rates have been arrived at after local inquiry and inspection of the ground."

11. If the land be required for Public Works purposes, the Collector will then forward an estimate of the cost of the land and a draft of declaration in form B, for issue under section 6, to the Executive Engineer, for submission to Government through the usual channel; but if the land is required for other Departments or for a Company, the Collector will (unless otherwise ordered) forward the documents to the chief local representative of the Department or Company for which it is required, for submission to Government through the head of the Department.

12. The special attention of Collectors is drawn to the necessity for making their initial estimates (whether under clause 7 or clause 10 above) of the cost of land to be taken up as accurate as possible. Careless estimates not only throw out the

calculatio f the Department for which the land is to be acquired, but, if they err by excess, are likely, though in no way binding on Government, to prejudice the public interests by giving colour to extravagant claims at a later stage of the proceedings. As plots of land similar to those to be acquired change hands from time to time, and records of many, if not all, of these transactions are to be found in the several Registrars' offices, the Collector should test the valuation by a careful examination of the registration records, whenever this source of information may be available. In Orissa he should consult the settlement records.

13. The law does not require that the declaration under section 6 shall specify the precise boundaries or area of the land to be taken. This, however, is advisable when no doubt exists as to the actual quantity which is required; but where there is a doubt, the declaration should be so generally worded, that no impediment may afterwards arise from its terms to prevent the appropriation of all the land that can possibly be required. In the case of land required for a road, canal, distributary, railway, &c., unless there is any reason to the contrary, it will be sufficient to give in the declaration the approximate area, length, breadth, and the general direction of the land for the road, with the names of the district, pergunnahs, and villages through which the road will pass.

14. When issuing the declaration, Government will also sanction the estimate, and communicate this sanction to the chief office of the Department through which the reference has been made, and also to the Board of Revenue and the Examiner of Public Works Accounts or the Accountant-General, as the case may be; and will also state against what particular item of the budget the expenditure is to be charged.

15. After the issue of the declaration, the officer who was entrusted with the preliminary investigation, or, in case no such investigation shall have been held, some officer on behalf of the Department or Company for which the land is required—such Department not being the Revenue Department—will, if this has not already been done, mark out, on the requisition of the Collector, the boundaries of the land, and furnish the Collector with a plan or map of it. The Collector will then proceed to make a detailed survey of the land. For this purpose he may employ any of his subordinate staff who may be acquainted with surveying. In important cases sanction to a special establishment must be applied for. The cost of this establishment, and all other charges incurred for the purposes of the acquisition, will be costs in the case. Wherever practicable, the survey should be made by chain and prismatic compass and be plotted by scale, and the officer conducting it should prepare a detailed record of his survey

and measurements, and an abstract, or *khatian*, grouping together the plots of lands and other property found in the possession of each person interested. The officer who has conducted the preliminary investigation, or some other competent officer deputed by the Department for which the land is to be occupied—if that Department be other than the Revenue Department—will, on the requisition of the Collector, point out the boundaries of the land to be taken up, whether such boundaries have been demarcated under section 4 or not. On receipt of the plan and measurement papers, the Collector should test them by comparison with the map and specification of area supplied by the Department for which the land is required, and in case of discrepancy have an inquiry made, and, if necessary, call on such Department to point out the boundaries a second time. The plan or map should be prepared on paper of the same quality as that used by the Survey Department for village maps. It should show in one or more clearly coloured blocks the land acquired under the declaration and the scale on which it has been prepared. In the margin of the plan it should be stated that "the land acquired for (*specify the purpose*) as shown in this plan is coloured pink (or blue or green) and contains an area of so many acres, and is bounded as follows :—(*specify boundaries*)."

These particulars should be transcribed in English in the Collector's office; and when the map or plan has been finally approved by the Collector under the provisions of clause 17, an authenticated copy should be forwarded to the Board of Revenue for record, prepared on tracing cloth. The maps or plans so forwarded will be bound up in the Board's office in separate volumes for each district, and each volume will contain an index in the form given in appendix O. There will be special volumes for lands acquired for railways, canals, and municipalities, and in these cases the maps or plans need not be bound up in separate volumes for each district.

16. If the land be required for the Revenue Department, the necessary demarcation and the preparation of the map will be, of course, carried out by an officer deputed for the purpose by the Collector.

17. When the Collector has satisfied himself that the two plans represent the same land, he ought, where this appears advisable, to have the survey tested on the spot, making on such testing any alteration that may seem necessary. He will also ascertain the rates of rent paid, and record them and appraise the quality of the land and the value of the houses, trees, or crops upon it. The Collector may delegate to a Covenanted Officer or Deputy Collector, or in certain cases to a Sub-Deputy Collector or other duly qualified subordinate, the conduct of the inquiry into rates and values contemplated in this clause.

18. With the data thus obtained, the Collector will be in a position to revise the initial estimate referred to in clauses 7 and 16. Too great care cannot be taken in making the examination. The amount of the revised estimate should be recorded, and if it materially exceed the amount of the original estimate, the Collector should at once stay proceedings and report the probability of such excess to the Executive Engineer, in the case of land required for Public Works purposes, or, in the case of land required for any other Department or for a Company, to the chief local representative of the Department or Company for which it is required, that it may be ascertained whether the object sought cannot be otherwise secured, either by obtaining some other plot of land than that originally contemplated, or in some other way. The same course should be followed if at any time before award or reference to the Civil Court the Collector has reason to believe that the cost of acquisition will considerably exceed the estimate.

19. In preparing the revised estimate, the Collector should take into account the matters specified in section 24 of the Act as well as the additional compensation of 15 per cent. which is payable on the market-value under section 42. When the land is revenue-paying, he should carefully observe the directions of clause 23 as to the mode in which the value of the land is to be determined, and he should at the same time record the amount of Government revenue which is to be deemed payable in respect of the land, and state by which of the modes mentioned in rules III and IV of the Government Rules the amount has been ascertained; and where the area of the land does not exceed one-twentieth of the area of the parent estate, he should note the amount of the capitalized value of the revenue which will have to be paid to the proprietor, in addition to the market-value, in the event of the arrangement described in rule VI of the Government Rules being agreed upon between the Collector and the proprietor.

20. As soon as the operations prescribed by the last preceding clause have been completed, the Collector will proceed under section 9 of the Act. Should the land be occupied by, or any portion of it belong to, or be in the possession of Government, the personal notice required by the law should be served on the chief local representative of the Department interested. Forms of notice will be found in appendices C and D. A form of requisition under section 10 is given in appendix E.

21. The attention of Revenue officers is called to the provisions of clause 2 of section 10 of the Act, recourse to which will obviate delay, when the Collector has not the information required to enable him to serve the necessary notices under section 9.

21 A. An occupancy ryot is undoubtedly entitled to compensation for his right of occupancy in a holding taken up for public purposes. Even a tenant with a lease of two or three years only is entitled to some compensation though less than what would be due to an occupancy ryot. This claim of the ryots, although capable of valuation, is believed to be seldom put forward or pressed, the compensation-money being usually shared among the superior tenure-holders and the zemindars. The attention of Revenue Officers is therefore drawn to the fact that ryots having a right of occupancy, as well as ryots holding under unexpired leases, are 'persons interested' in the land, and entitled to share in the compensation, and that their names should be entered in any notice under section 9 of Act X of 1870, and in any reference to the Civil Court under sections 15 and 18, or under section 38. The ryot will frequently not be able to obtain his share unless the Collector intervenes in his behalf, and he should, therefore, be distinctly and officially recognized in all stages of the proceedings.

22. Whenever the proprietor of any land, which may be required to be taken up by Government, offers to make an absolutely free gift of it, or to give it provisionally for a particular purpose, on the understanding that when no longer wanted for that purpose it shall revert to him, it will not always be necessary to carry out the procedure prescribed by the Act, but the following rule will apply. In cases in which all the interests in the land are given free of cost,—*i.e.*, where a zemindar agrees to hand over the land free of all encumbrances to Government, himself settling with the under-tenants,—the donor should be required to execute and register a deed of gift, the cost of stamping and registering such deed being borne by Government. When, however, some interests, but not all, are given, it will be a matter for consideration whether it is worth while to accept the gift, and the Collector should report such cases for the orders of the Board. If the Board determine to accept the gift, a deed of gift will be taken from the donor and acquisition-proceedings under the Act will then be carried out, Government taking the donor's place in respect of the interest conveyed by the deed of gift. If the Board decide to decline the gift, it will of course be necessary to carry out the procedure laid down in the Act in respect of the whole of the interests concerned.

23. Sections 11 to 15 lay down the rules according to which the Collector is to conduct his inquiry into the value of the land and into the amount of compensation to be awarded to the persons interested in it, and the conditions upon which he is either to make the award himself or to refer the matter to the decision of the Court. The Collector's attention has already been directed to the rules promulgated under section 59 of the Act and having

the force of law, which are published at the beginning of these instructions. It will be observed that the procedure in the case of revenue-paying land has by these rules been materially altered. In every case, as the rules now stand, acquisition of land under the Act entitles the proprietor to release from liability for any revenue-charge upon it, and it is the duty of the Collector, before determining the amount of compensation to be tendered or allowed in the case of any revenue-paying land which is under acquisition, to ascertain, in the manner laid down in rules III and IV of the Government Rules, the amount of Government revenue which is to be deemed payable in respect of such land, and to record this for the purposes of the subsequent proceedings. He will then determine the market-value of the land, *i.e.* the price which it would command in the market *while continuing subject* to the payment of the ascertained amount of land revenue. It is upon this market-value, and upon this only, that the additional compensation of 15 per cent. under section 12 must be calculated and paid. The proprietor receiving the market-value is also entitled to have his revenue abated by the amount of revenue to which his estate is liable if the land acquired be a whole estate or tenure assessed with a specific amount of revenue, or by the amount assessed by the Collector as above upon the land acquired, and this abatement must in every case be offered. It is only in cases where the area of the land acquired does not exceed one-twentieth of the area of the estate that the Collector is at liberty, if the proprietor desires this, to pay to him the capitalized value of the revenue demand on the land on condition of his continuing to pay the revenue of the entire estate without abatement. The capitalized value will be calculated in the way prescribed in rule VI of the Government Rules. If the proprietor decline to receive an abatement of revenue, he is not at liberty to claim its capitalized value or to demand any further compensation on that account. The only case in which he can claim a further sum in consideration of his continuing to pay the revenue is when the area acquired is less than one-twentieth of the area of the whole estate; and then only if the Revenue authorities see fit to agree to the payment of this capitalized value of such revenue.

24. Section 15 specifies five separate conditions, on the occurrence of any one of which the inquiry is taken out of the Collector's hands. Four of these conditions, *viz.*, the first, third, fourth, and fifth, read together with that specified in section 14, limit his jurisdiction to the single instance in which all persons whom he may have reason to believe interested in the land have presented themselves, raise no question among themselves as to their several rights and interests in the land, and accept the amount of compensation offered. Even in the absence of any

difficulties or objections on the part of the persons interested, the Collector can, under the second condition specified in section 15, hand the matter over to the Court, if for any good reason he considers that further inquiry as to the nature of any claim preferred before him ought to be made by the Court.

25. It is not always necessary, or even desirable, to treat the whole land covered by a declaration as a single case, the objection to doing so being that if a single claimant or interested person fails to attend, the whole matter must be sent to the Court, very often greatly to the inconvenience and expense of those parties who have attended and agreed to the Collector's tender. The land may ordinarily be divided into separate portions or plots, and separate proceedings be held as regards each plot, provided only that *the basis of division be land, and land alone. It is not permissible to divide off the separate interests in a particular plot and treat each as a separate case.* The general practice should be to split up the block of land covered by the declaration into a number of separate and distinct plots, each plot representing, *not a separate interest, but a separate claim.* There is a wide difference between a separate interest and a separate claim. *A* may be interested in a piece of land as a zemindar, *B* as a putnidar, *C* as an under-tenant, but the three interests of *A*, *B* and *C* make up only one claim. The Collector has nothing to do with the separate interests of *A*, *B* and *C*: he awards compensation calculated on the market-value of the land, and if *A*, *B* and *C* cannot agree to divide among themselves the total sum awarded in proportion to their separate interests, the Civil Court must apportion the amount under Part IV of the Act. The point for inquiry, it should always be borne in mind, is the whole value of the land.

26. Section 38 provides that even after the amount of compensation has been settled with the parties, if any dispute arises about the apportionment of that amount, the Collector shall refer such dispute to the decision of the Court—the award, however, as regards the total amount of compensation remaining final. If no such dispute occur, the particulars of the apportionment are, under section 37, to be specified in the award.

27. In conducting his proceedings as to the award, the Collector should invariably explain carefully to the parties before him the provisions of sections 24 and 25, informing them that on the principles therein enunciated his own award and that of the Court, if reference be made to it, must be based; and that if the case goes to the Court, and the sum ultimately awarded as compensation by the Court do not exceed the amount tendered by himself, the whole costs of the proceeding before the Court will fall on them under section 33.

28. The award to be made by the Collector must of course include the value of any buildings and trees standing upon the

land, and of such crops as the parties interested shall not agree to remove.

29. When a reference has been made by the Collector under section 15 to the Court, the Collector should defend the case exactly as he would a Government suit. The claimant in such cases is to be regarded as the plaintiff and the Government as defendant; and it is the duty of the Collector to see that evidence is forthcoming to show the fairness of the amount which he was willing to give as compensation. As soon as the claimant files his written statement in the case in Court, the Government Pleader should apply to the Court for a copy of it for the information of the Collector, to enable the Collector to meet the case set up by the plaintiff with suitable evidence. The Collector must remember that the Court will decide on the evidence before it what amount of compensation is to be given, and he must therefore be prepared with reliable evidence at the trial. In important cases he should consult the Legal Remembrancer as in ordinary civil suits. At the time of the award of the Court being declared, the Collector, or the officer who appears on his behalf, should request the Judge to state the amount of costs incurred in the proceedings, and by what persons and in what proportions they are to be paid.

30. In the case of lands taken up for a canal, road or railway, the reference to be made by the Collector to the Court under section 15 or 43 must in no one case cover more land than is included in any one of the mile plans prepared by the surveyor in measuring lands of this description.

31. The Collector's attention is drawn to rule VIII of the Government Rules, which directs him to record a separate finding, under the first head of section 24 of the Act, for the calculation of the additional compensation.

32. An award made by a Collector cannot, if it is made in accordance with the provisions of the law, be subsequently amended by any authority. Officers should therefore be most careful, before making an award, to take all precautions to avoid error or oversight.

33. Whenever proceedings under the Act are conducted by an Assistant or Deputy Collector empowered under the provisions of section 3 to act as a Collector, such officer may, if the amount of his intended award be within the sanctioned estimate, make the award without further reference. If it be beyond the amount of the sanctioned estimate, he must consult the Collector of the district demi-officially, and will make his final award according to the instructions received from the Collector. The Collector, however, is at liberty, if he sees fit, to require a reference to be made to him in all cases before the award is given. The completion report of every case under the Act, and

every progress report, when such reports are submitted, must be subscribed with a certificate signed by the officer making an award under section 14 that "the prices awarded are not in excess of those for which similar lands are actually sold in the same parts of the district;" or, in case such officer should be unable to find evidence of the circumstances of actual sales, that "the prices awarded are not greater than those which similar lands in the same parts of the district might be reasonably expected to command." It is the duty of the Commissioner, in forwarding the progress reports to the Board, to record his opinion in respect to the suitability or otherwise of the awards shown in them.

34. In special cases it is competent to the Board to exempt officers empowered to take up land under the Act from the obligation of referring their proceedings for the approval and confirmation of the Collector of the district. As reference to the Collector involves delay and some harassment to parties, the Commissioner will apply to the Board for this exemption whenever he thinks the officer taking up the land is fully competent to make a final award on his own responsibility.

35. In cases where the amount of compensation which it is proposed to tender exceeds in any one case Rs. 10,000, a reference must be made to the Commissioner, whether the officer conducting the proceedings be the Collector himself or a subordinate empowered under section 3 of the Act. Generally the reference should be demi-official. In the former case the Collector should, after making the requisite inquiries under section 11, postpone his final award under the provisions of section 12, and report his opinion on the case to the Commissioner, forwarding at the same time all documents which may seem necessary to enable that officer to judge of the propriety of the proposed award. Similarly, in the second case, the necessary papers should be forwarded to the Commissioner with the Collector's own opinion on the propriety of the tender proposed by the officer empowered under section 3. The Commissioner will either confirm the proposed tender or call for further information if necessary on any point.

36. Commissioners and Collectors will be held responsible for these references being disposed of with despatch. Any unnecessary delay in dealing with such cases not only embarrasses the Department for which the land is required, but may seriously enhance the cost; for it has been ruled that, on a reference to the Civil Court, the Judge and assessors are bound to consider the market-value of the land *at the time of the award of compensation by the Court*. Hence if, from any cause, the market-value rises in the interval while the papers are under consideration of the Commissioner or Collector, as the case may be, the original

estimate may be greatly exceeded. The knowledge that proceedings are pending may of itself tend to enhance the market-value of land.

37. Section 16 empowers the Collector to take possession of the land as soon as he has made an award or a reference to the Court, and the Act empowers no one else to do so. It is to be distinctly understood that occupation of the land by any other officer or person without written authority from the Collector is illegal. When land has been taken up for the use of the Public Works Department, possession will be given by the Collector to the Executive Engineer, or to some person duly authorized in writing by the Executive Engineer to receive it and to no other person. Where a reference has been made to a Court, the Collector, if the land is not required for immediate use, may at his discretion defer taking possession of it until the award of the Court has been declared.

38. In cases of urgency, section 17 allows occupation by the Collector, under special orders from the Local Government, before award or reference; but the Collector should be careful to obtain the orders of Government before taking possession, and should wait until the expiry of 15 days from the date of the publication of the notice mentioned in the first paragraph of section 9. It is also necessary, in regard to this section, to observe that it applies to 'waste and arable' land only, and not to land occupied by roads, tanks, buildings, &c. There is, however, no objection to land or buildings being informally occupied, if necessary, provided all the parties interested consent in writing to the land being occupied in anticipation of the formal orders, and that it is understood at the time that the taking of such possession is without prejudice to the right of Government to be acquired under the Act in respect of such land or building. Formal possession must, however, be afterwards taken under the Act in supersession of the previous possession acquired by consent.

39. Sections 18 to 36 regulate the procedure to be adopted by the Court in the investigation of cases referred by the Collector. The only sections among them, other than sections 24 and 25 already referred to, which concern the Collector, are sections 18, 19 and 35, and their provisions call for no special remark, except that the assessor to be nominated by the Collector under section 19 should be, as a rule, an officer of Government specially selected for that purpose, and that all the rules in force relating to appeals in civil suits in which Government is concerned apply to appeals instituted against or on behalf of Government under section 35.

40. The rules for payment are contained in sections 40 to 42 of the Act, and rule XI of the rules promulgated under sec-

tion 59. Rule XI has been framed in accordance with the principle that section 42 of the Act cannot be construed to give a claimant a right to any interest if the non-receipt of the principal is due to his own neglect, or to impose upon the Collector the trouble of seeking his creditors in order to pay them. The Collector is, however, personally responsible for the disbursement of the amount, as soon as it falls due under the provisions of those sections and is properly applied for; and neglect or carelessness in this respect may render him liable to pay any interest which may accrue under section 42 of the Act. If the amount to be disbursed is likely to exceed the funds at the Collector's command, he should take timely steps for obtaining, in accordance with departmental instructions, the necessary supply of money before the date on which the payment becomes due; but that payment must in any case be made when due and properly applied for. The amount which may be paid under rule VI of the Government rules is not liable to any interest charge under section 42, as it *does not form part of the award of compensation.*

40 A. A register should be kept up by every Collector in the form given in appendix Q, showing on account of each project the amount due under the award and held in deposit for each person in each case. When payment is to be made, the application for payment will have to be compared with the entry in this register as well as with the amount of the award in the original land acquisition record, and the order for payment, in words as well as in figures, will be recorded on the application to be filed with the record, and in the register, exactly as is done in the repayment of revenue deposits. By this means the same check against embezzlement will then exist as now exists in the repayment of revenue deposits.

41. The cost of serving processes or any other costs should not fall on the Government in cases which are referred to the Civil Court under section 38. All that section 38 requires is that when the amount of compensation has been settled under section 14, if any dispute arises as to the apportionment of the same, or any part thereof, the Collector shall refer such dispute to the decision of the Court. When the Collector has referred the dispute, he has done all that is required of him. To complete the matter, however, he should serve notices on the parties interested through his own peons, stating that he has made the reference required by section 38. The parties interested must then look after their own interests, and take proceedings to obtain the decision of the Court on the subject of their dispute. There is no reason why the Government should be called on to look after the serving of processes of the Court or to pay for them, unless the Government itself should, for any special cause, desire to expedite proceedings, in which case the Government must bear the costs.

42. When the lands have been held heretofore free of rent in cash or kind, or on a quit-rent on condition of the performance of some public service, the Collector, in cases of doubt as to the proper procedure, should refer the matter to the Board, in view to obtain instructions for the due protection of the Government interest in the apportionment of the compensation, in respect to its lien for the purposes of the public service, and to enable him to represent this where necessary before the Civil Court.

43. In cases in which the land held free or on a quit-rent is held by a paik or village chowkidar, the value of the holding should be separately assessed and recorded, and should be included in the total amount of compensation to be allowed in the award. The value so ascertained should not be paid to the service-holder, but should be placed in deposit and appropriated according to the following rules:—

(i)—When the area of the acquired land forming a single holding or portion of a single holding, is equal to or exceeds a beegha, the sum so placed in deposit should be applied for the purpose of purchasing another piece of land, similar in quality and quantity to the first piece, and situated adjacent to it, or in its immediate neighbourhood. If the amount of deposit is not sufficient to purchase the land required to compensate the holder of the service land, the difference should be made good by Government, and the amount charged to land revenue, care being taken that due economy is observed and unreasonable claims are not admitted. This second piece of land should be acquired under the provisions of the Act, and should be made over to the holder of the service land, to be held by him on the same terms as the original holding was held at the time of its acquisition.

(ii)—When the area of land acquired is less than a beegha, it will not be worth while going through the process enjoined above. Instead of doing so, annual interest should be paid to the service-holder at the rate of 6 per cent. on the sum held in deposit; provided that as soon as the aggregate acquisitions of land forming portions of a single holding, or of the holdings of a single individual, amount to a beegha or more, a fresh piece of land may be acquired and made over to the service-holder in the manner indicated above, payment of interest ceasing from the date of the transfer. The amount of interest should be sent out annually to the service-holder by the Collector, at the cost of Government, without waiting for any application to be made for it.

This rule is applicable only to cases occurring since the 31st March 1874.

44. The Collector must disburse all costs of measurement under section 8. Costs when incurred under section 4 will be

disbursed by the officer entrusted with the preliminary investigation.

45. Whenever land is acquired for any purpose which is not strictly a Government purpose, as for a Municipality, a District Road Committee or a Company, or the like, the whole cost of acquisition should be charged to such Municipality, Committee, Company, or other body of persons, as the case may be. Provided that when the land is revenue-paying land in respect of which an abatement of revenue has been granted, in addition to the cost of acquisition, the Municipality, Committee, Company or other persons concerned, shall be required to pay to Government the capitalized value of the revenue assigned to the land calculated at the current rate for capitalizing annual payments made to or by Government.

46. As soon as possession of the land has been taken, the Collector should give effect to any abatement of revenue which may have been determined on in connection with it.

47. The attention of Collectors is called to the provisions of section 42, by which an additional compensation of 15 per cent. on the *market value*, not the total award, is to be paid to the owners of the land occupied. In other words 15 per cent. is not to be added to compensation awarded in consideration of any of the matters specified in clauses 2, 3 and 4 of section 24. Nor is it to be added to the amount which may be paid under rule VI of the Government rules as the capitalized value of the revenue deemed payable in respect of the land acquired, as that amount *does not form part of the market value of the land.* A table is given in appendix N for calculating the additional compensation. Collectors should be careful, when making an offer for the land to be taken, to see that that offer is based strictly on the grounds prescribed by the law. They should also, at the time of making the offer, inform the proprietors that they will receive 15 per cent. over and above the market value of the land. If this be not borne in mind, it will sometimes happen that 15 per cent. will go to the proprietors in excess of what they agreed to, or of what the Collector intended to award.

48. As under section 3 trees, houses and other immoveable things standing on land under acquisition for public purposes, are included in the definition of the word "land," the value of such things, *minus* the cost of repairs of houses, should always be included in the Collector's estimate of the market value of the land, and the additional compensation under section 42 must be paid on the lump sum.

49. It should be borne in mind that it is a presumption of law that the surrender of land acquired under the Act is compulsory. The additional compensation of 15 per cent. must therefore be paid in all cases, except where, under special agree-

ment, the parties have accepted a lump sum, and distinctly waived or included therein the claim to any additional compensation under section 42. In all such cases this agreement must be taken in writing, and filed with the proceedings.

50. Sections 43 to 45 prescribe the procedure to be followed in procuring *temporary* occupation of waste or arable land. In these cases no declaration is required by the law, but with this reservation all the procedure prescribed in clauses 16 to 22 above will apply as far as the case requires. Generally, also, the procedure required after issue of declaration in the case of lands to be taken up permanently, will be applicable to cases of temporary occupation under these sections.

51. Sections 46 to 50, making special provision for the terms on which Government will take up lands for the use of Companies, need no particular comment. The officer of any Company for whom Government may undertake to acquire land will, when authorized under section 4, proceed according to the instructions already given. Under section 50 the agreement must appear in the *Gazette of India*, as well as in the local official Gazette, before proceedings can be taken under section 8 of the Act.

52. The amount of compensation under section 54, as under section 5, will be fixed by the Collector on a summary inquiry, and without record of evidence on oath, and is final.

53. The Collector will prepare and submit to the Commissioner with each case a final report of his proceedings, with full information classified under the following headings :—

1. Account of any preliminary investigations under section 4, and of any award made by the Collector on reference under section 5 of the Act.
2. Date and full particulars of the declaration under which the land was acquired.
3. Description of the manner in which the land was measured, and the agency by which the plan was made according to section 8.
4. Full particulars (with dates) of the issue and service of (*a*) the general and (*b*) special notices under section 9, and (*c*) of proceedings under section 10.
5. Report of the inquiry held under section 11, the names of all who attended in person or by agent on the day fixed, and of all postponements under section 12.
6. Report of the award made by the Collector under section 14, with full particulars as to any abatement of revenue, and the capitalization of the same, with statement of the date from which any abatement takes place.

7. Date on which possession was taken under section 16 or 17, or in any other manner.

8. Full particulars of any reference made to the Civil Court, and of the proceedings before the Civil Court; the steps taken to support the Collector's award, assessors' appointment, &c.

9. Copy or substance of the award under section 34, and recorded grounds thereof, with particulars as to costs, and explanation of any difference between the award of the Court and Collector's tender.

10. Report of any proceedings in appeal from the decision of the Civil Court.

11. Proceedings regarding the apportionment of compensation under Part IV of the Act.

12. Proceedings regarding payment under Part V of the Act.

13. Account of any proceedings under Part VI of the Act.

All the above headings will not have to be filled up in every case; for instance, when there is no reference to the Civil Court. On the other hand, they are not exhaustive, and every officer is required to supply any additional information that may not fall under any of the above headings. Under headings 4 to 12 of the final report, each of the *claims* or *cases* separately treated under clause 25 above will bear a distinct number, and will be indicated by the same number in appendix F. Thus all the information regarding each *claim* or *case* will be easily traced through the headings of the final report. This report will be accompanied by a statement of the particulars of the award in form F. When the officer submitting the final report is not the Collector of the district, he will submit it through the Collector of the district.

54. A special note must be made in the final report of any proceedings connected with the relinquishment of land under section 44, and of any compensation paid under section 54.

55. Whenever a special officer is deputed for taking up lands for Imperial or Provincial purposes, as for a railway, canal or road, he will be supplied with funds by the Examiner of Public Works Accounts by means of credit orders, and he will render to that officer monthly accounts of expenditure as prescribed for a civil disbursing officer. He will also submit to the Board monthly bills accompanied by the award statement (appendix F) prescribed by clause 58 below. In all other cases the Collector will make the necessary disbursements from his general treasury balance, and will enter the expenditure in his cash account under the head to which it is properly debitable for adjustment by the Accountant-General. In cases in which the amount of a single payment does not exceed Rs. 50 or 100, the Collector

or special officer as aforesaid may, if he thinks fit, arrange to relieve the payee from the trouble of coming into head-quarters to receive the money by forwarding to him the amount in cash, whenever his residence for the time being is situated at a greater distance than 10 miles from the Collector or other officer's head-quarters. With the final report and appendix E, prescribed in clause 53 above, should be submitted a bill in the form given in appendix G, which should in every case be countersigned by the Commissioner. The Board of Revenue will pass on the bill with their countersignature, for audit, to the respective Officers of Accounts concerned, viz.—

1. Bills for lands taken up for Guaranteed Railways to the Examiner, Public Works Accounts, Bengal.
2. Bills for Imperial Civil Buildings and Irrigation Works to the Examiner, Public Works Accounts, Bengal.
3. Bills for Provincial Buildings and Roads to the Examiner, Public Works Accounts, Bengal.
4. Bills for other Provincial lands, the declarations for which issue from the General branch of the Secretariat, to the Accountant-General, Bengal.
5. Bills for Military Works to the Examiner, Military Works Accounts, Simla.
6. Bills for State Railways to the Examiner of the respective Railway Accounts.
7. Bills for District Roads to be returned to the Commissioner for submission to the Chairman of the respective Road Committees.

56. In cases referred to a Court in which costs have been decreed against Government, the amount of the costs should be entered in the abstract bill in appendix G, after the item "other expenses incurred in taking up the land," under the heading "costs decreed against Government." Costs decreed to Government, although realized from the owner of the land by deduction from the amount of compensation paid being of the nature of advances recovered, should not be taken *in abatement of the price paid for the land*, and should not therefore be shown in the body of the abstract. The amount, however, with an explanatory note, should be entered in the column of remarks, and should also be distinctly credited in the treasury cash accounts.

57. The data on which the price of the land has been fixed should also be entered in the column of remarks. When the amounts of compensation have been disbursed out of funds supplied by the Examiner of Public Works Accounts by means of credit orders, the fact should be noted at foot of the bill. In all other cases the numbers and dates of vouchers on which the amounts of compensation, &c., have been drawn from the treasury, and the fund or particular item of the budget against which the

expenditure has been charged, should be noted on the reverse of the bill.

58. When lands are taken up for a road, or any other purpose that necessitates the consecutive acquisition of several plots of land, monthly bills, accompanied by the awards (appendix F) of the amounts charged in them, should be submitted after the lapse of six months from the publication of the declaration, until the work is completed. This clause, however, does not dispense with the submission of the final report and appendices F and G, prescribed by clauses 53 and 55 above, when the proceedings for the whole of the land covered by the declaration are closed.

59. When the nature of operations under the Act requires submission of monthly bills, the value of abatements of revenue should be included in the items of cost entered, and the abstract in every case filled up. District officers will regard the passing of these monthly bills as sufficient authority for including in their quarterly return No. IX all abatements of revenue covered by such passed bills, the Board's orders being quoted in each instance.

60. Alienations of land from revenue-paying estates under this Act should be carefully noted against the estates in the Collector's general register (A). Similar entries in the rent-free land register should be made for lakhiraj lands taken.

61. With reference to section 17, clause 3 of the Indian Registration Act (III of 1877), the Board are of opinion that every receipt for Rs. 100 or more of compensation paid under the Land Acquisition Act (X of 1870) should be registered. It is to be observed that separate receipts for less than Rs. 100 need not be registered, even though they concern one plot of ground and aggregate Rs. 100 or more.

62. The Commissioner and Board of Revenue cannot set aside or modify any order passed by the Collector under this Act.

63. Besides the returns mentioned in clauses 53 and 55 above, the following returns are required to be submitted periodically to the Board :—

Quarterly Return No. XVIII.—Progress in taking lands for public purposes.

Annual Return No. XXIV.—Estimate of compensation for lands to be taken for public purposes.

Forms of these returns are given in appendices L and M. The quarterly return is to be submitted through the Commissioner, the annual return to the Board direct.

Return No. XVIII.—All cases of lands taken up for embankment purposes under Act VI (B.C.) of 1873 should be shown in Part II of the return. No case should be struck out of the return till the proceedings have been reported to, and approved by, the Board.

SECTION II.—SPECIAL RULES FOR TAKING UP LAND FOR GUARANTEED RAILWAYS; FOR RAILWAYS TO BE CONSTRUCTED BY PRIVATE COMPANIES; FOR STATE RAILWAYS, AND FOR CANALS AND ROADS.

Part 1. *Guaranteed Railways and Railways to be constructed by Private Companies.*

1. Land required for guaranteed railways and railways to be constructed by private Companies is divided into four classes—A, B, C and D. *First*, class A, land which a Railway Company receives free of charge, under the contract with the Government, for permanent occupation; *second*, class B, land also provided free of cost, but only for temporary occupation; *third*, class C, land which the Railway Company has to provide at its own cost; *fourth*, class D, land which does not come directly into the possession of the Railway Company at all.

2. Class A comprises the land required for the permanent works of a railway, including the road with its bridges, &c., and all stations, workshops, permanent store-houses and the like, necessary for the line when opened, and which, under the contracts, is to be provided by Government free of cost to the Railway Companies. The occupation of this land by a Railway Company is so far permanent that it only ceases when their contract is terminated or surrendered, and the whole lapses to Government. It is all provided free of charge.

3. Class B contains land essential for the execution of the permanent works of a railway, but not required after the completion of the line, in part or in whole, such as land for spoil banks, for extra excavation to make banks, for river diversion, and for the storage of railway materials held in stock by the Railway Company, pending the construction of the line or their despatch to the works.* It also is provided free of charge. The occupation of this class of land will be temporary.

4. Class C contains the land which a Railway Company has to provide at its own cost. This is the land which is required for the provision or preparation of materials, for purposes contingent on the actual execution for the works on the line, or for other miscellaneous objects which the Government recognizes as falling legitimately within the scope of the Railway Company's operations, though not giving the Company a claim to the provision of land free of charge. As a Railway Company is bound to pay for the construction of all works out of its capital, only receiving from Government, without charge, the land on which the works stand, the pro-

* The last sort of land is allowed free under the Right Hon'ble the Secretary of State's letter No. 25 of 30th November 1858.

vision of all materials, and the means of facilitating the execution of all works, are to be at the cost of the Railway Company.* It is proper to bear in mind, in fixing the rent, that this land will in part deteriorate by the use to which it is put, and in part will not so deteriorate. In all cases, however, it will be most convenient to deal with the land, in the first instance, in the same manner. It will be taken possession of by Government, and handed over to the Railway Company for occupation at a fair rental. When the necessity for occupation ceases, the land will be restored to the Government by the Railway Company, the proper time for the relinquishment being determined by the Railway officer and Consulting Engineer.

5. Class D contains that land which, being required in consequence of the works of a railway, still does not come directly into the occupation of the Railway Company. It will be provided free of charge. It will be exclusively land for roads, either new roads leading to railway stations, or to permanent store-yards or workshops detached from the main works, or diversions or changes of old roads made necessary by railway works.

6. Inconvenience would arise if Railway Companies were permitted to hold land on their own account, or otherwise than is above explained. By causing them to rent from the Government all land to which they are not entitled free, in the manner above explained, simplicity in the tenure of their property is secured, which will be a matter of importance at a future time when the railway may be transferred to Government. The

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* The following words were also in the original rules, and in the rules for taking up lands for railway purposes by the Government of India, issued 29th June 1861:—

"In this class, therefore, will fall all land for brick-making, for quarrying ballast, (*a*) for houses for persons employed on the works, &c; so also land for houses for engine-drivers and the like on the line when opened, and for other similar purposes, will come under class C."

But Her Majesty's Secretary of State for India thought that any particularization in the rule might raise questions as to the power of Government to alter or vary the terms of the contract (a power which the Government has no intention of claiming). It has therefore been thought best to give these words in a note, simply for the guidance of the officers of Government and parties interested, as to the construction which Government puts on the contract in regard to certain points of frequent practical application.

(*a*) In the original rules, the words "for roads to works in progress" here found place, but they have been struck out as calculated to mislead. It is clear a road may be required from a site used temporarily for storage of materials itself in class B. This would carry the road itself into the same class. A road from a brickfield or quarry would be in the same category as the brickfield or quarry, *viz.* class C; whereas a road from a detached but permanent storeyard, although leading "to works in progress," would not the less come under class D, should such road still be necessary after the completion of those particular works. Thus, generally, the circumstances of the tenure of land at the end of the road furthest from the railway will decide the class into which the road itself shall be placed.

determination of the value to be paid by the Government for any land not included in class A, which might be held by a Railway Company, would certainly be in such an event a great embarrassment.

7. Houses, trees, tanks or other property on land which is not provided free of charge, and for which special payment or compensation is necessary, must be paid for at once by the Railway Company, and the Revenue officers will be held strictly responsible for the regular adjustment by the Railway Companies of all charges on this account and on account of land, to be determined in the manner above explained. In the case of land provided free of charge, the materials, &c., derived from the 'clearance' of the surface, which then will be at the expense of Government, will be disposed of by the Revenue officers to the best advantage.

8. The annual rent on lands in class C, occupied by any Railway Company, shall be fixed at 5 per cent. on the outlay incurred by Government in taking up the land, *plus* any revenue or rent payable to Government in respect of the said land.

9. In the case of land already belonging to, and in the occupation of, Government, the rent shall be fixed at 5 per cent. on the value of the land as estimated by the Collector.

10. In the event of the land being required for purposes through which its letting value will be diminished, the Railway Company, on relinquishing it, shall pay, in addition to any rent paid during the occupation of the land under the previous instructions, the estimated difference between the actual value of the land when relinquished and the value that the land would have had if the rent remained at the amount that was paid during the occupancy of the Company.

11. When land, presented in free gift by private individuals for the purpose of a railway, is made over to a Railway Company in class C, no rent shall be charged by Government for the land.

12. Under clause 10 above, the real value of the land to the Government, before it was handed over to the Company, would be properly estimated on the basis of the rent charged for it. But when land has been actually paid for by the Company already, no re-opening of the old transactions should take place, and the adjustment can be made when any land is given up.

13. Compensation paid for surrender of a lease or any other charge should be considered in fixing the rent. If the land is not in the occupation of the Government, and therefore cannot be transferred to the Company without charge of some sort, it comes under clause 8, above.

14. It will be necessary for the Government to see that all rents or other payments for clearances, &c., chargeable on

behalf of Government against any Railway Company are duly realized.

15. All contemplated changes in the land in possession of a Railway Company should be promptly reported by the Railway Agent to the Consulting Engineer to Government, who will notify the same to the Local Government. It will be for the latter to see that the necessary steps are taken by the Revenue authorities for entering such changes in their records, and for carrying out all further proceedings that are requisite on such an occurrence.

16. The several classes of land required for guaranteed railways and railways to be constructed by private Companies will be colored pink, yellow, purple and green, respectively in the plans, and the exact purpose to which each parcel of land is to be devoted will be noticed in the schedule.

17. The subjoined form of schedule should be used for all guaranteed railways and railways constructed by private Companies :—(*Form of Schedule.*)

The following orders have been passed by the Governor-General in Council, subject to the approval of the Secretary of State, in regard to the adjustment of transactions in connection with lands in the possession of, or hereafter to be acquired for, the East Indian Railway Company :—

(i) That all distinctions as to classes of land that existed prior to the 1st January 1880 shall cease from that date.

(ii) That all money due for land acquired by the Company prior to the 1st January 1880, and which was not adjusted in the accounts of the line, for periods previous to this date, shall now be paid by the State ; also that it is only in respect of land provided after that date that the value shall be debited to the capital account of the new undertaking under clause 29 of their contract ; and that in appraising land so made over, after the 1st January 1880, the value not only of lands purchased for the undertaking. but also of lands the property of Government, shall be debited to its capital account.

(iii) That all class C lands, the property of Government, for which the old Company paid rent, shall, from the 1st January 1880, be held by the new Company free of charge, except when rent was specially reserved in the new contract ; but as regards lands similarly held by the old, and now in the possession of the new Company, of which the Government is not the actual owner, but in connection with which the Government of India has merely acted as the agent, through whose hands the rent passed to the rightful owner, that the old practice of calling on the Company to pay all sums for which the Government of India continues to be liable to private owners, shall remain in full operation.

And the Board, in directing that these orders be at once acted on, have prescribed the following rule :—

All C class lands which do not fall under the exceptions contained in the 3rd clause should be entered in Register B, Part II, as revenue-free and occupied for public purposes under section 11, Act VII (B.C.) of 1876. The exceptions in the case of C class lands are—(1) where the payment of rent is specially reserved in the new contract of January 1880, entered into between the East Indian Railway Company and the Secretary of State for India : (2) where a rent is payable through the Government to private owners.

Part 2. State Railways.

1. Land required for State Railways may be divided into two classes—A and B.

Class A.—Land required permanently, or land necessary for the railway when it is open for public traffic, and when the works of construction are finished. Such lands are the sites of bridges, embankments, cuttings, fencings, and other works; the cess or berme introduced for the sake of safety between the limits of the works and the adjacent spoil bank, bazar, or side-cutting; roads permanently required and immediately in the neighbourhood of stations, over-bridges, under-bridges, or level-crossings on the railway; land or water required for the water-supply; land wanted for the preparation and reception of such materials as are used in maintenance, as ballast-pits; land for the lasting diversion of water-courses, and all space permanently required at the stations, whether for traffic, storage, workshops, dwellings or recreation.

2. *Class B.*—Land required temporarily, or land necessary to be taken up but not permanently wanted. Such land will be for roads required for access to works while in progress, but which will subsequently be abandoned; land for side-cutting and spoil banks occupied during construction for the preparation and reception of materials used in constructing the railway, as brick-fields, quarries or ballast-pits; the temporary diversion of streams and high-ways. The sites of overseers' dwellings to be occupied only during construction, will come in this class.

3. All transfers of land belonging to a State Railway are reported by the Executive Engineer to the Engineer-in-Chief, who is required to notify the same to Government for such orders as will ensure the changes being entered by the Revenue officers in their records, and for carrying out all further proceedings that are requisite on such an occasion.

4. Land required permanently under class A for a State Railway will be colored pink in the plans; those temporarily under class B will be colored yellow.

5. Subjoined is the form of schedule of lands taken for State Railways:—(*Form of Schedule.*)

Part 3. General—for all Railways, Roads and Canals.

1. All land required for any line of railway, road or canal, should be applied for in continuous portions; the measurements and areas being recorded in accordance with the fiscal divisions of villages, estates or mouzahs, pergunnahs and zillahs. In the case of land required for a railway these details should be given in schedules, for form of which, *vide* clause 17, part 1, and clause 5, part 2, showing in detail the several classes to which the land belongs.

2. Plans furnished by Railway officers of lands required for a guaranteed railway, or a line to be constructed by private Companies, will be drawn on a scale of 150 feet to the inch; those for State Railways, roads or canals, on a scale of 300 feet to the inch. Each plan should consist of the length of one mile, and they should be numbered consecutively. The area of the land to which each plan refers should be noted, in acres, roods and poles, and in standard beeghas of 14,400 square feet, on the face of the plan, as well as in an accompanying reference sheet or schedule. Where lands situated in different villages are covered by the plan, the area of the portion included in each village is to be shown separately in the plan and schedule. Each plan and schedule shall also bear a note stating the purposes for which the land is required.

3. The boundary of a district will of course seldom or never coincide with the termination of a mile. Unless it does so, a separate plan should be prepared for each of the broken parts of a mile on either side of the boundary, so as to keep the records of each district separate.

4. As soon as the plans of the several miles or portions of a mile are completed, they should be submitted by the Surveyor to the Collector or officer appointed to take up the land, *i.e.*, some officer vested with the powers of a Collector under section 3 of the Act.

5. Detached portions of land should be referred to some fixed point on one of the main sheets, with such distances and compass or other bearings as will enable the land to be identified at once. A corresponding entry should also be made on the main sheet to draw attention to the detached portion.

6. The general correctness of the plans and schedules furnished by the Engineer for guaranteed railways and railways to be constructed by private Companies will be attested by the Consulting Engineer to the Government of India; those for State Railways by the Engineers-in-Chief or other controlling officers; and the attesting officers will in each case forward the application, through Government, to the Board of Revenue to be dealt with as may be necessary by the Revenue authorities.

7. The instructions laid down in clauses 7 to 19, section I, for the framing and submission of estimates and for the issue of declarations, will apply.

8. After issue of the declaration, the Collector, or the officer appointed to take up the land, will call on the officer who conducted the preliminary investigation, or some other officer to be appointed on the Collector's requisition by the Department or Company on account of which the land is to be occupied, to mark out the boundaries of the land. These marks, whether pegs or trenches, must be in exact accordance with the plans or instruc-

tions, and the termination of each mile must be clearly defined by side pegs and a cross nicking. The numbers (reckoned consecutively from the starting point of the line) of the miles of which they severally mark the termination and commencement should be painted on the front and back of each peg respectively. The officer entrusted with the execution or supervision of this work should himself mark the spots where the line passes out of one district into another.

9. The officer appointed to take up the land will then appoint an ameen or surveyor to make the measurements necessary for fixing the value of the land and for preparing schedules.

10. The ameen's maps for all railways, roads and canals, should be prepared on paper or tracing-cloth, and should correspond each to each with those of the professional officer, and each one should represent a mile according to the marks on the ground where the termination of each mile is represented by a cross nicking. The maps must show the different holdings and the boundaries of each village differently colored, and should be upon the scale of 75 feet to the inch. Each plot or dág of the ameen's measurement is to be numbered consecutively from the beginning of each mile; and the area of each plot (in standard beeghas of 14,400 square feet) with the name of the proprietor should be noted on the plot on the face of the plan. In the cases of lands required for railways, a separate series of numbers must be given for each class of land (A, B, C or D).

11. From each separate plan is to be prepared a separate schedule in the form given in appendix H.

12. The boundary of a district will, as already remarked, seldom or never coincide with the termination of a mile. Unless it does so, a separate plan and schedule must be prepared for each of the broken parts of a mile on either side of the boundary, so as to keep the records of each district separate.

13. Again, it is very improbable that the termination of a mile will coincide precisely with the boundary of a holding. Unless it does so, the holding must be broken up into the portions lying on either side of the termination of a mile, and planned and entered in the schedule accordingly.

14. As soon as the plan and schedule of each mile, or portion of a mile, is completed, it should be submitted by the ameen to the officer appointed to take up the land, who will immediately test the correctness of the ameen's work in every particular, making any alterations that he may think necessary in red ink, and returning the rough copy to the ameen to be copied fair, as finally approved. The officer will, at the same time, himself appraise the quality of the land, and the value of the houses, trees or crops, upon it.

15. The ameen will prepare the usual abstract or *khatian* of his survey and measurements, as directed in clause 15, section I.

16. The officer appointed to take up the land will then issue the notices prescribed by section 9 of the Act, and prepare a register in the form given in appendix I, in which he will enter the particulars of each case separately. It is desirable, as far as possible, to treat as one case all the land in one plan for which compensation is to be paid to one person or set of persons.* The cases should be entered in separate groups according to the nature of the tenures as 'revenue-free,' 'revenue-paying,' &c.

17. There should be a separate register for each separate mile, or portion of a mile, to correspond with the separate plan and schedule of the ameen or surveyor. The register cannot be completed until the proceedings are finally closed, but the officer should at once test the correctness of the areas entered in it by comparing the total area which it shows (which must of course be *identical* with that shown in the corresponding plan and schedule of the ameen or surveyor) with the gross area of the whole mile as shown in the original plan (*see* clause 2 above). If the result be a difference of more than $2\frac{1}{2}$ per cent., the cause must be investigated and (if correction is impossible) recorded. But correction must always be made where practicable, as a difference of area is a proof that one of the two plans is incorrect.

18. As soon as the register and records of each mile are as complete as the officer can make them, they shall be forwarded to the Collector of the district, who, when he has received all the records of the portion of the line which passes through his district, will prepare an abstract in the form given in appendix K.

19. The abstract should be bound up with the registers, schedules and plans, and with the receipts given for the com-

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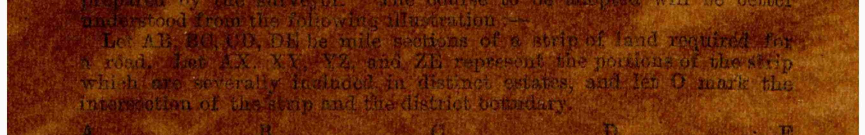
* Vide clause 39, section I, which provides that "the reference to be made by the Collector to the Court under section 15 or 43 shall in no one case cover more land than is included in any one of the mile plans prepared by the surveyor." The course to be adopted will be better understood from the following illustration:—

Let AB, BC, CD, DE be mile sections of a strip of land required for a road. Let AX, XY, YZ, and ZE represent the portions of the strip which are severally included in distinct estates, and let O mark the intersection of the strip and the district boundary.



Then the compensation for the lands comprised in AB, BX, XY, YC, CZ, ZD, DO, OE, respectively, must be determined in separate and distinct cases, whether the award be made by the Collector or the case be referred to the Court for adjudication. And in this illustration the cases comprising the lands from A to O and O to E severally will of course be disposed of by the authorities of the districts in which the areas in question are respectively included.

pensation paid, and should be deposited in the record-room with a proper label upon it.

20. When the necessity for occupation ceases, the land belonging to any railway will be restored to Government, the proper time for this being determined by the Consulting Engineer in the case of land relinquished by Companies, and by the Engineer-in-Chief when no longer required for State Railways, or other controlling officers.

21. All lands required for any railway under class B will, in the first instance, be permanently acquired by Government in accordance with the general rules, except in the neighbourhood of towns and other places of importance where the land is above the ordinary value. Such portions of B class lands as will not suffer deterioration while in the possession of the Railway officers may, to secure economy, be taken temporarily.

22. No Railway officer shall obtain possession of land whether by purchase, lease or on simple toleration, except through the Revenue authorities.

23. In order to secure a correct record of title for all railway lands, a register of title with a complete set of plans to correspond should be kept, in the case of State Railways, in the office of the Engineer-in-Chief. In the case of guaranteed railways and other railways constructed by private companies, a similar register and set of plans is kept in the office of the Consulting Engineer to the Government of India. In all cases two other copies should be furnished, one for the office of the Board of Revenue and the other for the office of the Collector of the district in which the land lies.

24. It is the duty of the Consulting Engineer to the Government of India for Guaranteed Railways, and the Engineer-in-Chief or other controlling officers of State Railways, in conjunction with Engineers in charge of railways, and the Revenue authorities, periodically to adjust the boundaries, the controlling officers being held specially responsible for any excess or deficiency in the land held for railway purposes, as well as for the punctual fulfilment of the foregoing rules in their several departments, and for the careful record of correct registers and plans in their respective offices.

APPENDIX A.

[SEE SECTION I, CLAUSE 3.]

Form of Notification under Section 4, *Act X of* 1870.

WHEREAS it appears to the Lieutenant Governor of Bengal that land is likely to be required to be taken by Government at the public expense for a public purpose, viz. for , in the village of , pergunnah , zillah , it is hereby declared that for the above purpose a piece of land measuring, more or less, beeghas cottahs chittacks of standard measurement, bounded on the [*here specify the boundaries*], is likely to be required within the aforesaid village of .

This declaration is made, under the provisions of section 4 of Act X of 1870, to all whom it may concern.

Collector.

Dated 18 .

APPENDIX B.

[SEE SECTION I, CLAUSES 9 TO 11.]

Form of Declaration under Section 6, *Act X of* 1870.

WHEREAS it appears to the Lieutenant-Governor of Bengal that land is required to be taken by Government at the public expense for a public purpose, viz. for , in the village of pergunnah , zillah , it is hereby declared that for the above purpose a piece of land measuring, more or less, beeghas cottahs chittacks of standard measurement, bounded on the [*here specify the boundaries*], is required within the aforesaid village of .

This declaration is made, under the provisions of section 6 of Act X of 1870, to all whom it may concern.

Collector.

Dated 18 .

APPENDIX C.

[SEE SECTION I, CLAUSE 20.]

Form of General Notice to be published under paragraphs 1 *and* 2, *Section* 9, *Act X of* 1870, *for land to be taken up.*

NOTICE is hereby given that beeghas cottahs chittacks, more or less, of land situate in or near the village of , bounded as below, and recently marked out and measured, is about to be taken by Government for a [*here specify the purpose*], under Act X of 1870, in accordance with a declaration, No. , dated , published in the Government Gazette of the . All persons interested in this land are hereby called upon to appear personally or by agent on the [*enter a date not less than fifteen days from the date of the publication of the notice*] at the Office of , at , to state the nature of their interest in the land, and the amount and particulars of their claims to compensation for the same.

Boundaries.

North—	East—
South—	West—

Collector.

Dated 18 .

APPENDIX D.

[SEE SECTION I, CLAUSE 20.]

Form of Special Notice to be issued under paragraphs 3 and 4, Section 9, Act X of 1870, to occupiers of the land to be taken up, and other persons known or believed to be interested in it, or to be entitled to act for persons so interested.

NOTICE is hereby given that beghas cottahs chittacks, more or less, of land situate in or near the village of bounded as below and recently marked out and measured, is about to be taken by Government for a [*here specify the purpose*], under Act X of 1870, in accordance with a declaration, No. dated , published in the Government Gazette of the . If you have any interest in this land, or are entitled to act for persons so interested, you are hereby called upon to appear personally or by agent on the [*enter a date not less than fifteen days from the date of the publication of the notice*] at the Office of at , to state the nature of such interest in the land, and the amount and particulars of any claim you may wish to prefer for the same.

Boundaries.

North— East—
South— West—

Collector.

Dated 18

APPENDIX E.

[SEE SECTION I, CLAUSE 20.]

Form of Requisition under Section 10, Act X of 1870, to be added when necessary to Notice in Appendix D.

You are hereby required to furnish the undersigned with a statement containing, so far as may be practicable, the name of every person possessing any interest in the land, or any part thereof, referred to in the notice of served on you, as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Collector.

Dated 18

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APPENDIX N.

[SEE SECTION I, CLAUSE 47.]

Table for calculating the 15 *per cent additional compensation under section* 42 *of Act X of* 1870.

Rs.	A.	P.	Rs.	A.	P.	Fractions.
.....	..	1	.....	...	...	$\frac{3}{20}$
.....	...	2	.....	...	...	$\frac{6}{20}$
.....	...	3	.....	...	...	$\frac{9}{20}$
.....	...	4	.....	...	...	$\frac{11}{20}$
.....	...	5	.....	...	...	$\frac{14}{20}$
.....	...	6	.....	...	...	$\frac{18}{20}$
.....	...	7	.....	...	1	$\frac{1}{20}$
.....	...	8	.....	...	1	$\frac{4}{20}$
.....	...	9	.....	...	1	$\frac{7}{20}$
.....	...	10	.....	...	1	$\frac{10}{20}$
.....	...	11	.....	...	1	$\frac{11}{20}$
.....	1	...	.....	...	1	$\frac{16}{20}$
.....	2	...	.....	...	3	$\frac{13}{20}$
.....	3	..	.....	...	5	$\frac{8}{20}$
.....	4	...	.....	...	7	4
.....	5	...	.....	...	9	.....
.....	6	...	.....	...	10	$\frac{16}{20}$
.....	7	...	.....	1	...	$\frac{13}{20}$
.....	8	...	.....	1	2	$\frac{8}{20}$
.....	9	...	.....	1	4	$\frac{4}{20}$
.....	10	...	.....	1	6	.....
.....	11	...	.....	1	7	$\frac{16}{20}$
.....	12	...	.....	1	9	$\frac{12}{20}$
.....	13	...	.....	1	11	$\frac{8}{20}$
.....	14	...	.....	2	1	$\frac{4}{20}$
.....	15	...	.....	2	3	.....
1	...	...	.....	2	4	$\frac{16}{20}$
2	...	...	.....	4	9	$\frac{12}{20}$
3	...	...	.....	7	2	$\frac{8}{20}$
4	...	...	.....	9	7	$\frac{4}{20}$
5	...	...	... ..	12	...	.....
6	...	...	.....	14	4	$\frac{16}{20}$
7	...	...	1	0	9	$\frac{12}{20}$
8	...	..	1	3	2	$\frac{8}{20}$
9	...	...	1	5	7	$\frac{4}{20}$
10	...	...	1	8	...	.....
11	...	...	1	10	4	$\frac{16}{20}$
12	...	...	1	12	9	$\frac{12}{20}$
13	...	...	1	15	2	$\frac{8}{20}$
14	...	...	2	1	7	$\frac{4}{20}$
15	...	...	2	4	...	.....
16	...	...	2	6	4	$\frac{16}{20}$
17	...	..	2	8	9	$\frac{12}{20}$
18	...	...	2	11	2	$\frac{8}{20}$
19	...	...	2	13	7	$\frac{4}{20}$
20	...	...	3	...	...	.....
30	...	...	4	8	...	.....
40	...	...	6	...	...	.....
50	...	...	7	8	...	.....
60	...	...	9	...	...	.....
70	...	...	10	8	...	.....
80	...	...	12	...	...	.....
90	...	...	13	8	...	.....
100	...	...	15	...	...	.....

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